

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

**CALISIA KELLEY and JOHNNIE MAE
KELLEY, Co-Administrators of the
ESTATE OF BRUCE KELLEY JR.,
deceased,**

Plaintiffs,

Vs.

**BRIAN O'MALLEY, both
in his Official and Individual Capacities
as Sergeant for the Allegheny County Port
Authority and DOMINIC RIVOTTI, in both his
Official and Individual Capacities as Officer for
the Allegheny County Port Authority,**

Defendants, Jointly and Severally.

)
) Civil Action No. 2:17-cv-1599 NBF
)

) **TYPE OF PLEADING:**

) **PLAINTIFFS' APPENDIX IN**
) **OPPOSITION TO**
) **DEFENDANTS' SUMMARY**
) **JUDGMENT MOTION.**
)

) **NATURE OF COMPLAINT:**
) Section 1983 Civil Rights Action
) Excessive/Deadly Force
)

) **FILED ON BEHALF OF:**
) Calisia Kelley and Johnnie Mae
) Kelley, Co-Administrators of
) the Estate of Bruce Kelley, Jr.,
) deceased.
)

) **BY:**
) Noah Geary, Esquire
) Suite 225
) Washington Trust Building
) Washington, PA 15301
) 724-222-3788
) PA ID 78382
)

June 4, 2021

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EXHIBIT 1

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

BRUCE KELLEY JR

FEBRUARY 01, 2016

CASE NO.: 16COR00901

FINAL PATHOLOGICAL DIAGNOSES:

- I. PENETRATING GUNSHOT WOUND OF THE TRUNK (A):
 - A. Entrance location: Right anterior lateral neck
 - B. Range: Indeterminate
 - C. Injuries: The bullet lacerates the skin, subcutaneous tissues and muscles of the neck/chest, the right anterior 1st intercostal space, right lung, vena cava, right lobe and caudate lobe of the liver, terminal ilium, and muscles of the left anterior inguinal region
 - D. Direction: Right to left and downward
 - E. Recovery: Medium caliber jacketed hollow point bullet from the left anterior inguinal region
- II. PENETRATING GUNSHOT WOUND OF THE TRUNK (B):
 - A. Entrance location: Right upper back
 - B. Range: Indeterminate
 - C. Injuries: The bullet lacerates the skin, subcutaneous tissues and muscles of the back and fractures the right posterior ribs 3 – 9
 - D. Direction: Back to front and downward
 - E. Recovery: Medium caliber deformed and fragmented jacketed hollow point bullet from the right mid back
- III. PERFORATING GUNSHOT WOUND OF THE TRUNK (C):
 - A. Entrance location: Left upper lateral chest
 - B. Range: Indeterminate
 - C. Injuries: The bullet lacerates the skin, subcutaneous tissues and muscles of the chest, left 3rd intercostal space, left lung, heart, right lung and fractures the right 5th rib laterally
 - D. Direction: Front to back, left to right and downward
 - E. Exit location: Right lateral chest

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- IV. PENETRATING GUNSHOT WOUND OF THE CHEST (D):
 - A. Entrance location: Midline anterior chest
 - B. Range: Indeterminate
 - C. Injuries: The bullet lacerates the skin, subcutaneous tissues and muscles of the chest, sternum at the 2nd intercostal space and right 3rd rib anteriorly, right lung, aorta and T₉ vertebral body
 - D. Direction: Front to back
 - E. Recovery: Medium caliber deformed jacketed hollow point bullet from T₉ vertebral body
- V. PENETRATING GUNSHOT WOUND OF THE TRUNK (E):
 - A. Entrance location: Left lateral flank
 - B. Range: Indeterminate
 - C. Injuries: The bullet lacerates the skin, subcutaneous tissues and muscles of the flank, fractures the left 9th rib, left lobe of the liver and stomach near the gastroesophageal junction
 - D. Direction: Front to back, left to right and downward
 - E. Recovery: Medium caliber deformed jacketed hollow point bullet from the right lower back
- VI. PENETRATING GUNSHOT WOUND OF THE TRUNK (F):
 - A. Entrance location: Right mid back
 - B. Range: Indeterminate
 - C. Injuries: The bullet lacerates the skin, subcutaneous tissues and muscles of the right mid back, right posterior ribs 6 – 7, left lung and left main bronchus
 - D. Direction: Back to front, right to left and upwards
 - E. Recovery: Medium caliber deformed jacketed hollow point bullet from the thoracic spine region
- VII. PERFORATING SUPERFICIAL GUNSHOT WOUND OF THE RIGHT UPPER EXTREMITY (G)
 - A. Entrance location: Right anterior medial forearm
 - B. Range: Indeterminate
 - C. Injuries: The bullet lacerates the skin, subcutaneous tissues and muscles of the right forearm
 - D. Direction: Front to back
 - E. Exit location: Right anterolateral forearm

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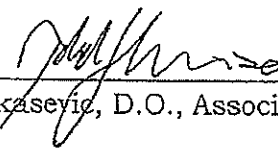
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- VIII. EVIDENCE OF BLOOD ASPIRATION IN THE LUNGS
- IX. POSTMORTEM TOXICOLOGY TO FOLLOW WHEN COMPLETE

OPINION:

Bruce Kelley, Jr., a 37 year old African-American male, died as a result of multiple gunshot wounds of the trunk.

MANNER OF DEATH: Homicide



Todd Luckasevic, D.O., Associate Medical Examiner
alb

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NARRATIVE SUMMARY:

The autopsy was performed on February 01, 2016 at 9:00 A.M.

Todd Luckasevic, D.O., Associate Medical Examiner, Prosector

Lisa Leon, Autopsy Room Technician

Donald Kanai, Photographer

Detective Kevin McCool from Allegheny County Homicide was present during the examination

EXTERNAL EXAMINATION:

The body is that of a well-developed, adequately nourished African-American male, weighing 213 pounds, measuring 74 inches, and appearing to be consistent with the age of 37 years.

The body is unembalmed.

The body is clad in the following articles of wearing apparel:

- 1 pair of gray socks
- 1 pair of white socks
- Brown leather boots
- Black coveralls
- Black fleece gloves
- Black denim jeans

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- Brown leather belt with brown metal buckle
- Orange shorts
- Blue boxer briefs
- Gray hooded jacket
- Brown/black/white sweater
- Black ski mask
- Tan thermal long-sleeved shirt
- Gray thermal long-sleeved shirt
- White t-shirt
- Gray t-shirt
- White sleeveless t-shirt

There are 6 Taser probes attached to the black coveralls. There are numerous gunshot holes of the coveralls, jacket, sweater, shirts and t-shirts corresponding to the gunshot wounds of the trunk.

The clothing is intact, soiled and wet with blood

The following articles of jewelry are present on the body:

- Yellow metal necklace with yellow metal cross pendant
- 4 rubber bracelets around the right wrist
- 5 rubber bracelets around the left wrist

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The temperature of the body is cool to the touch. Rigor mortis is moderately well developed and present to an equal extent in all joints. Pink, non-fixed, scanty livor mortis is evident over the posterior parts of the body, except in areas exposed to pressure, where it is absent. The body shows no evidence of decomposition.

The skin is soiled, pale and wet with blood.

The head is normocephalic.

The head and face exhibit trauma which will be described below. The head hair is black and of a short length. The eyes are brown with pale conjunctivae. The corneae and lenses are transparent. No petechial hemorrhages are noted in the conjunctivae. The pupils are regular, round, equal, central and measure 0.4 cm in diameter. The external ears and external auditory canals are unremarkable. The skeleton of the nose is intact, and no foreign material is present in the nostrils. No foreign material is present in the oral cavity. The gums are normal. The upper and lower teeth are natural and in a fair state of dental repair. The front upper teeth are remotely absent. The lips, oral mucosa and the tongue reveal no evidence of trauma.

A black mustache and beard are present. There are elastic blue yellow and black ties in the beard.

The neck is symmetrical and reveals trauma to be described below. No increased mobility on manipulation is detected.

The shoulders are symmetrical.

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The chest is symmetrical and exhibits trauma which will be described below.
The breasts are symmetrical.

The abdomen is flat and no masses can be palpated through the abdominal wall.

The back is symmetrical and exhibits trauma which will be described below.

The external genitalia and the anus are unremarkable. The testes are palpable in the scrotum. No injuries of the upper thighs, perineum or anus are detected. No foreign bodies or hemorrhages are noted in the anal canal.

The extremities are symmetrical and exhibit trauma which will be described below. Brown paper bags have been placed about both hands and secured at the area of the wrists by tape. No broken or missing fingernails are noted. The hands are bloody and soiled with dirt. The fingernails are regular, dirty, short and unremarkable. The toenails are dirty, short and unremarkable. There is some clubbing of the fingernails. The skin of the legs does not exhibit brown dyspigmentation or dystrophic changes. Pitting edema is not present in the ankles or legs. The soles of the feet are clean and unremarkable.

Manipulation of the neck, shoulders, elbows, wrists, fingers, hips, knees and ankles fails to elicit any bony crepitus or abnormal motion.

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The body shows the following evidence of recent physical injury:

I. Multiple Gunshot Wounds of the Trunk and Extremities (7 lettered for convenience without regard to chronology)

A. Penetrating Gunshot Wound of the Trunk

On the right anterolateral neck, centered 8 ½ inches from the top of the head and 3 ½ inches right of the anterior midline is a ¼ inch round gunshot wound of entrance with a concentric abrasion margin measuring up to ⅛ inch. There are associated irregular abrasions located at the 11 o'clock position of the wound measuring up to ½ inch and ¼ inch at the 9 o'clock position. There is no soot or gunpowder stippling present on the skin. The bullet creates a hemorrhagic and destructive wound path through the skin, subcutaneous tissues and muscles of the right neck and upper right chest. The bullet then courses between the clavicle and right anterior 1st intercostal space. The bullet then lacerates the right lung, vena cava, right lobe and caudate lobe of the liver, the terminal ileum, and muscles of the left anterior inguinal region. Within the muscles of the left anterior inguinal region, centered 28 inches from the top of the head and 4 inches left of the anterior midline a medium caliber jacketed hollow point bullet is recovered. The path of the bullet is from right to left and downward.

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B. Penetrating Gunshot Wound of the Trunk

On the right upper posterior back, centered 9 ½ inches from the top of the head and 4 inches right of the posterior midline is a ¼ inch round gunshot wound of entrance with a concentric abrasion margin measuring up to ½ inch. There is no soot or gunpowder stippling present on the skin. The bullet creates a hemorrhagic and destructive wound path through the skin, subcutaneous tissues and muscles of the right upper back. The bullet then fractures the posterior paraspinal surfaces of the right posterior ribs 3 – 9. Within the subcutaneous tissues of the right mid back centered 22 ½ inches from the top of the head and 4 ¼ inches right of the posterior midline is a 1 inch triangular defect with underlying deformed and fragmented medium caliber jacketed hollow point bullet that is recovered. The path of the bullet is from back to front and downward.

C. Perforating Gunshot Wound of the Trunk

On the left upper lateral chest, centered 12 ¾ inches from the top of the head and 5 ½ inches left of the anterior midline is a ¼ inch round gunshot wound of entrance with a concentric abrasion margin measuring up to 1/16 inch. There is no soot or gunpowder stippling present on the skin. The bullet creates a hemorrhagic and destructive wound path through the skin, subcutaneous tissues and muscles of the chest. The bullet then enters the left chest cavity by coursing through the left 3rd intercostal space

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anteriorly. The bullet then lacerates the left lung, the heart, and the right lung. The bullet then exits the right lateral chest by fracturing the right 5th rib laterally. On the right lateral chest, centered 19 inches from the top of the head and 8 ½ inches right of the anterior midline is a ½ inch linear gunshot wound of exit. The path of the bullet is from front to back, left to right, and downward.

D. Penetrating Gunshot Wound of the Chest

On the anterior midline chest, centered 14 ¾ inches from the top of the head and at the anterior midline is a ¼ inch round gunshot wound of entrance with a concentric abrasion margin measuring up to 1/16 inch. There is no soot or gunpowder stippling present on the skin. The bullet creates a hemorrhagic and destructive wound path through the skin, subcutaneous tissues and muscles of the chest. The bullet then fractures the sternum at the 2nd intercostal space and right 3rd rib anteriorly. The bullet then lacerates the right lung, aorta, and the T₉ vertebral body. Within the vertebral body of the 9th thoracic vertebra, a deformed medium caliber jacketed hollow point bullet is recovered. The path of the bullet is from front to back.

E. Penetrating Gunshot Wound of the Trunk

On the left lateral flank, centered 21 ¼ inches from the top of the head and 9 ½ inches left of the anterior midline is a ¼ inch round gunshot wound of

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entrance with a concentric abrasion margin measuring up to $\frac{1}{16}$ inch. There is no soot or gunpowder stippling present on the skin. The bullet creates a hemorrhagic and destructive wound path through the skin, subcutaneous tissues and muscles of the left flank. The bullet then enters the left abdominal cavity by fracturing the left 9th rib laterally. The bullet then injures the left lobe of the liver and the stomach near the gastroesophageal junction. Within the subcutaneous tissues of the right lower back, a medium caliber deformed jacketed hollow point bullet is recovered. This bullet is recovered from the right lower back centered 24 $\frac{1}{2}$ inches from the top of the head and 4 inches right of the posterior midline creating a small slit-like $\frac{1}{8}$ inch laceration to the skin. The path of the bullet is front to back, left to right and downward.

F. Penetrating Gunshot Wound of the Trunk

On the right mid back, centered 21 $\frac{1}{2}$ inches from the top of the head and 4 $\frac{1}{2}$ inches right of the posterior midline is a $\frac{1}{4}$ inch round gunshot wound of entrance with a concentric abrasion margin measuring up to $\frac{1}{16}$ inch. There is no soot or gunpowder stippling present on the skin. The bullet creates a hemorrhagic and destructive wound path through the skin, subcutaneous tissues and muscles of the right mid back. The bullet then fractures the right posterior ribs 6 – 7. The bullet then lacerates the left lung including the left main bronchus. Within the left main bronchus near

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the mid thoracic spine region, a deformed medium caliber jacketed hollow point bullet is recovered. The path of the bullet is from back to front, right to left and upwards.

G. Superficial Perforating Gunshot Wound of the Right Upper Extremity

On the right anterior medial forearm, centered 18 inches from the top of the right acromion process is a ½ inch round gunshot wound of entrance. There is no soot or gunpowder stippling present on the skin. The bullet creates a hemorrhagic and destructive wound path through the skin, subcutaneous tissues and muscles of the right forearm. On the right anterior lateral forearm, centered 18 inches from the right acromion process is an oval-shaped, 1 inch gunshot wound of exit. The path of the bullet is from front to back.

Additional Injuries:

- Red abrasion ¼ x ¼ inch of the right mid abdomen
- Small superficial laceration ¼ x 1/16 inch of the anterolateral base of the left thumb
- Superficial laceration ¼ x 1/16 inch of the left ear

Evidence of recent medical/surgical treatment:

1. There are 4 adhesive electrocardiogram electrodes on the chest.

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Other identifying features:

- Tattoo depicting the name "Bruce" of the left upper arm
- Remote linear scar 3 x ½ inch of the left antecubital fossa
- Remote hyperpigmented scar 1 ½ x ½ inch of the dorsal left middle finger
- Remote scar ¼ x ¼ inch of the left anterior medial knee
- Remote scar 1 x 1 inch of the left anterior knee
- Remote scar 1 ½ x ½ inch of the right anterior knee
- Remote scar 2 x 1 inch of the right anterior knee
- Remote linear scar 2 x ¼ inch of the right anterior thigh

An Allegheny County Medical Examiner's identification tag is present around the left ankle.

No fresh needle marks or punctiform scars are noted in either antecubital fossa, interphalangeal spaces of the hands or feet, under the tongue or on the gums.

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INTERNAL EXAMINATION:

BODY CAVITIES:

The body is opened by a "Y" shaped incision. The abdominal fat pad is 2.4 cm thick at the umbilicus. The muscles of the chest and abdominal wall are normal in color and consistency. The ribs, sternum and spine exhibit fractures as described above. The pleurae are smooth. Each pleural cavity contains 500 cc of blood. The domes of the diaphragm are normally positioned. The peritoneum is smooth and thin and contains brown gastric contents. The peritoneal cavity contains 500 cc of blood. The liver and spleen do not extend below the costal margins. The bladder lies below the symphysis pubis. The organs of the pleural and peritoneal cavities are in their usual positions in situ. The mesentery and omentum are unremarkable. The pulmonary artery is opened in situ and no emboli are seen.

At this time representative samples of blood, urine, bile and eye fluid are taken for toxicological examination.

CARDIOVASCULAR SYSTEM:

The heart weighs 340 grams. The pericardium is thin, smooth and contains 50 cc of blood. The epicardial surface is smooth. There is a moderate amount of epicardial fat. The external configuration of the heart is unremarkable. The chambers of the heart are of normal size. The right and left ventricles reveal bullet lacerations. The endocardium and valve leaflets are smooth, transparent and exhibit no thrombi, vegetations or fibrosis. The circumference of the valves are as follows:

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tricuspid: 12 cm; pulmonic: 8.1 cm; mitral: 12 cm and aortic: 7.2 cm. The mitral valve is lacerated by a bullet path. The trabeculae carneae and papillary muscles are unremarkable. The chordae tendineae are usual. The right ventricle is 0.4 cm thick, and the left ventricle is 1.4 cm thick. The septum is 1.6 cm thick. The coronary arteries have their usual distribution with a right predominance. The right and left coronary ostia are normal in patency. Multiple cross-sections of the coronary arteries, at 0.2 cm intervals show the following pathological changes: Left anterior descending coronary artery reveals tunneling for a length of 2 cm and depth of 0.3 cm. The myocardium is of the usual consistency, red-brown and grossly homogeneous.

The aorta is lined by a smooth, tannish-yellow endothelium and is unremarkable except for a large bullet laceration at the level of T9.

The bifurcation of the iliacs is patent.

The venae cavae reveals bullet lacerations as described above.

RESPIRATORY SYSTEM:

The right lung weighs 430 grams, and the left lung weighs 470 grams. The tracheal mucosa is unremarkable. The pleurae are smooth, delicate and glistening. The lungs are not distended and are variegated pink-gray to dark purple. The lung parenchyma is of the usual consistency and mottled with a slight amount of anthracotic pigment. The lung tissue is moderately congested and reveals blood aspiration. No purulent exudate is expressed from the parenchyma on compression.

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No nodularity and no focal or diffuse lesions are seen. There are numerous bullet lacerations of the lungs.

The extra and intra-pulmonary bronchi are opened longitudinally, patent and unremarkable. The pulmonary arteries and veins exhibit no pathological change. The hilar and mediastinal lymph nodes are unremarkable.

HEPATOBIILIARY SYSTEM:

The liver weighs 1690 grams. The capsule of Glisson is transparent. The external surface is smooth, glistening and reddish-brown. The borders are sharp. The parenchyma is of the usual consistency, congested and brown/red with the usual lobular architecture and no focal or diffuse lesions. There are bullet lacerations of the liver as described above.

The gallbladder has delicate walls, contains 10 cc of green thin bile and has a smooth mucosa. No stones are present.

The intra and extra-hepatic biliary ducts are patent. The hepatic and portal veins and the hepatic artery are unremarkable.

HEMOLYMPHATIC SYSTEM:

The spleen weighs 110 grams and is of the usual consistency. The capsule is glistening and intact. The internal architecture is blurred due to congestion. The parenchyma is homogeneous.

There are no enlarged lymph nodes identified.

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GASTROINTESTINAL SYSTEM:

The esophagus is empty and unremarkable. The stomach contains 50 cc of brown, partially digested food. There are no drug-like residues, pills or capsules in the stomach. The stomach mucosa is pale with the usual rugal folds. The remainder of the gastrointestinal system is unremarkable. There is a bullet perforation of the terminal ileum.

The vermiform appendix is identified and contains no obstructions.

The retroperitoneum is unremarkable.

PANCREAS:

The pancreas weighs 130 grams. The parenchyma is tan-white and homogeneous.

UROGENITAL SYSTEM:

The kidneys are in the usual position and without malformation. The right kidney weighs 160 grams, and the left kidney weighs 190 grams. The surfaces are slightly granular. The capsules strip easily, revealing a gray-brown surface. The cortico-medullary junctions are well-defined. The renal papillae have no hemorrhage or necrosis. The calyceal and collecting systems are not remarkable. The renal arteries and veins are unremarkable.

The ureters are not dilated or obstructed.

The bladder contains 50 cc of clear yellow urine. The bladder exhibits the usual tannish-pink mucosa with no focal lesion. The ureteral orifices are patent.

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The prostate is not enlarged and does not impinge upon the urethra. The tissue of the prostate is lobulated, tan and moderately firm.

ADRENALS:

Both adrenals are of the usual size and shape. The cut surface shows a thin yellow cortex and brown-gray medulla.

MUSCULOSKELETAL SYSTEM:

There are no gross bony deformities. The muscles are well-developed and of the usual color and consistency. No fractures, dislocations, compressions or hemorrhages are noted upon examination of the spine. The vertebral bodies are not remarkable. No hemorrhages are noted in the paravertebral muscles. The sternum, ribs and spine exhibit the usual bone density and marrow.

NECK:

The soft tissues of the neck, the thyroid and cricoid cartilages, larynx, and the hyoid bone show no hemorrhages or evidence of traumatic injury. The thyroid gland weighs 20 grams. The parenchyma is reddish-brown and homogeneous. The laryngeal mucosa is pink/smooth with no focal lesions. There are no paratracheal hemorrhages or masses. There is no food, vomitus or foreign material in the upper airway. The epiglottis and vocal cords are unremarkable. The neck has been examined at the conclusion of the autopsy, after the blood has drained and the tissues are dry.

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CENTRAL NERVOUS SYSTEM:

The scalp is reflected from mastoid process to mastoid process, revealing a 1 x 1 inch left temporal subgaleal hemorrhage. The calvarium is intact and when removed, there is no evidence of epidural or subdural hemorrhages. The dura mater is white, smooth and does not exhibit any stains or discolorations. The leptomeninges are not remarkable.

The brain weighs 1560 grams and is of usual consistency. The gyri occupy their usual position, and the sulci exhibit a normal depth. The blood vessels at the base do not reveal any aneurysms or atherosclerosis. The cranial nerves are grossly unremarkable. The cerebral and cerebellar hemispheres are symmetrical and the surface does not display any scar tissue. The ventricles contain the usual amount of colorless fluid. The cerebellar tonsils are not herniated. The left and right uncus and hippocampus are not herniated. Multiple sections through the cerebrum, cerebellum, pons, midbrain and medulla exhibit the usual internal pattern with no focal or diffuse lesions.

The pituitary gland is unremarkable.

The dura covering the vault and the base of the cranium is removed.

The basilar skull is intact.

The atlanto-occipital articulation is intact. The odontoid process shows no fractures or dislocations. The cervical spine appears to be intact.

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NOTE:

Gunshot residue testing from both hands was obtained at the beginning of the autopsy.

Other evidence obtained includes samples of scalp and pubic hair, fingernail clippings from both hands, clothing, and recovered bullets.

All evidence is obtained by Autopsy Technician Lisa Leon and placed in an appropriately labeled envelope, with the name of the deceased. They will be submitted to the Forensic Science Laboratory Division of Allegheny County Medical Examiner's Office

MICROSCOPIC EXAMINATION:

The microscopic examination is held at the stage of block preparation.

EXHIBIT 2




155136 Hours	<ul style="list-style-type: none"> Officer reports on radio coming back out to Whitney Avenue.
Audio	 0000000107_PAC_Police_2016-01-31_15_51_36_by_ui_startdate_asc.wav
155153 Hours	<ul style="list-style-type: none"> Indiscernible transmission.
Audio	 0000000108_PAC_Police_2016-01-31_15_51_53_by_ui_startdate_asc.wav
155206 Hours	<ul style="list-style-type: none"> Officer Ravotti (5566) reports shots fired on Whitney Avenue and requests a medic. Dispatch acknowledges.
Audio	 0000000109_PAC_Police_2016-01-31_15_52_06_by_ui_startdate_asc.wav



EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
PENNSYLVANIA**

**CALISIA KELLEY and JOHNNIE MAE
KELLEY, Co-Administrators of the
ESTATE OF BRUCE KELLEY JR.,
deceased,**

Plaintiffs,

Vs.

**BRIAN O'MALLEY, both
in his Official and Individual Capacities
as Sergeant for the Allegheny County Port
Authority and DOMINIC RIVOTTI, in both his
Official and Individual Capacities as Officer for
the Allegheny County Port Authority,**

Defendants, Jointly and Severally.

Civil Action No. 2:17-cv-1599 NBF

TYPE OF PLEADING:

**AFFIDAVIT of MICHAEL
PALUSELLI.**

NATURE OF COMPLAINT:
Section 1983 Civil Rights Action
Excessive/Deadly Force

FILED ON BEHALF OF:
Calisia Kelley and Johnnie Mae
Kelley, Co-Administrators of
the Estate of Bruce Kelley, Jr.,
deceased.

BY:
Noah Geary, Esquire
Suite 225
Washington Trust Building
Washington, PA 15301
724-222-3788
PA ID 78382

June 3, 2021

JURY TRIAL DEMANDED.

AFFIDAVIT of MICHAEL PALUSELLI.

1. My name is Michael Paluselli.
2. I am an Investigator in the Commonwealth of Pennsylvania.
3. I have been an Investigator since 1991.
4. I was hired by attorney Noah Geary, Esquire to take measurements in this case from the scene of the shooting death of Bruce Kelley, Jr. in Wilkinsburg.
5. If called to testify, I could testify competently to all of the facts set forth in this Affidavit.
6. I have personal knowledge of all of the facts in this Affidavit.
7. I personally measured the following distance from the following points this day:
 - i. From the bottom of the first step of the steps going up to the front entrance of 710 Whitney Avenue to the edge of the opposite (North) side of the sidewalk on the other (North) side of Whitney Avenue. This distance includes: the yard in front of 710 Whitney Avenue, the sidewalk adjacent to the yard in front of 710 Whitney Avenue, the section of grass in between the sidewalk and the (South) edge of Whitney Avenue, the entire width of and across Whitney Avenue, the section of grass in between the edge of Whitney Avenue on the North side of the street, and the sidewalk on the North side of Whitney Avenue.
 - ii. When I face the house at 710 Whitney Avenue, I am oriented facing South. The Busway is to my right (West). Center Avenue is to my left (East).
 - iii. The distance measures 58 feet.

June 3, 2021

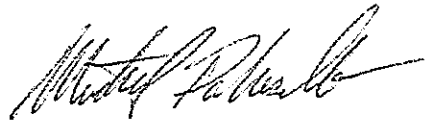


Michael Paluselli

VERIFICATION:

I, Michael Paluselli, hereby verify that the facts and statements made within are true and correct to the best of my knowledge, information and belief. I understand that false statements herein made are subject to the penalties of **Title 18 Pa. C.S.A. Section 4904**, relating to unsworn falsification to authorities.

Date: June 3, 2021

A handwritten signature in black ink, appearing to read "Michael Paluselli", written over a horizontal line.

Michael Paluselli

EXHIBIT 4

Section 3-4 USE OF FORCE

PURPOSE:

To provide police officers with guidelines on the use of deadly and non-deadly force.

POLICY:

The use of excessive and/or unnecessary force by a police officer is the ultimate discourtesy and misconduct. Brutality is the use of force where it is not required. The justifiable use of force where it is authorized under the law in making an arrest, in preventing the escape of a criminal or in protecting the life of the officer or of another person is not brutality. Officers will use physical force only when the exercise of persuasion, advice and warning is found to be insufficient to obtain cooperation and will use only the minimum degree of such physical force necessary on any particular occasion. This should not be interpreted to mean any officer should hesitate to act or retreat from the performance of his sworn duty when immediate physical response is required.

It therefore is the policy of this department that police officers shall use only the force that is reasonably necessary to effectively bring an incident under control while protecting the lives of the officer or another person.

DEFINITIONS:

DEADLY FORCE is defined as the force which is applied under circumstances that would cause a reasonable and prudent person to consider such circumstances as capable of causing death or serious bodily injury.

NON-DEADLY FORCE is defined as any force other than that which is considered deadly force.

USE OF NON-DEADLY FORCE:

Where deadly force is not authorized, officers should assess the incident in order to determine which non-deadly technique or weapon will best de-escalate the incident and bring it under control in a safe manner.

Police officers are authorized to use department approved non-deadly force techniques and issued equipment for resolution of incidents as follows:

- a. To protect themselves or another from physical harm or
- b. To restrain or subdue a resistant individual or
- c. To bring an unlawful situation safely and effectively under control.

~~Statistics show a significant decrease in police fatalities due to the use of body armor. It is the aim of the Port Authority Police Department to provide each officer with a ballistic vest at no cost to the officer.~~

NON-DEADLY FORCE WEAPONS AND METHODS:

1. A police officer is not permitted to use non-deadly weapons unless they have been trained by a qualified instructor in its proficient use as determined by training procedures.
2. The following non-deadly weapons are authorized:
 - a. Night Stick
 - b. ASP Tactical Police Baton
 - c. Tactical OC Aerosol
 - d. Taser X26/X2
 - e. 40mm less lethal launcher
 - f. NFDD-Noise Flash Diversionary Devices
 - g. Shotgun Impact/ Oleresin Capsicum munitions
 - h. 40 mm launchable gas/smoke

- *The Taser shall not be used on pre-teen children or pregnant women.*
- *All care shall be taken so as not to deploy the Taser in the area of the head and neck of a suspect.*
- *The Taser shall not be deployed in close proximity to flammable liquids.*
- *The Taser shall be holstered on the officers non gun side and shall be yellow or distinctively marked not to look like a service weapon*
- *Taser care. Probes will be removed by qualified medical personnel on the scene of the incident or at the hospital. All suspects that have been tasered by either a "drive stun" or probe deployment will be treated at a hospital.*
- *The probe impact sight or drive stun sight will be photographed and the photos added to the case file.*
*** After every Taser deployment, the DPM will be downloaded and the printout will be placed in the case file.*

OFF DUTY WEAPONS:

The Port Authority Police Department does not require officers to carry an off duty weapon, therefore there is no established policy on off duty weapons. *Officers are required to meet MPOETC firearm qualifications with all of their duty weapons every year.*

REPORTING DISCHARGE OF FIREARM:

Each discharge of firearm will be reported to the member's immediate supervisor whether or not someone is injured by such discharge. A written report on the appropriate form will be made as soon as time and circumstances permit but in no event later than the end of his or her current tour of duty. If a member is incapacitated as a result of a shooting incident, the officer's immediate supervisor will submit the initial report.

For purposes of reporting a discharged of firearm, each discharge will be classified in one of three categories:

1. Firearm discharge with no injuries, including accidental discharges

A. The following report procedures will apply:

1. The officer involved will immediately report the incident to his or her immediate supervisor.
2. The immediate supervisor will notify the Chief of Police and the Lieutenant in charge of the shift.
3. The officer involved will make all the usual reports for the incident in question.
4. The officer involved will make a Weapon Discharge Report.
5. The Lieutenant and /or Chief of Police will conduct an investigation into the circumstances surrounding the incident and make a determination as to whether or not the discharge was justified and consistent with Port Authority Police Policy. The Lieutenant will sign the back of the Weapon Discharge Report in the appropriate space, along with his or her conclusion and recommendation. This report will then be forwarded to the Chief.
6. All reports will then be forwarded to the Chief of Police, who will personally review all incidents.

2. Firearm discharge with injuries

A. When a firearm is discharged and the result is injury or death to another person, the following procedures will apply:

1. The officer will determine the physical condition of the injured party and render first aid when appropriate. Medical assistance will be called immediately.
2. Communications will be notified of the incident and location in order that the proper officials may be notified.

3. The shift supervisor will respond immediately and secure the scene pending the arrival of the appropriate Homicide Unit (Pittsburgh or Allegheny County).
4. All discharge weapons and ammunition will be confiscated by the immediate supervisor and be submitted for testing.
5. The appropriate Homicide Unit (Pittsburgh or Allegheny County) will be the investigation body in charge of all shootings resulting in death or injury.
6. The officer involved will not discuss the case with anyone except his supervisor, homicide investigators, his attorney, or other internal investigative personnel.
7. The officer involved will make all the usual reports for the incident in question.
8. The officer involved will make a Weapon Discharge Report.
9. All reports will be forwarded through the chain of command to the Chief of Police, who will personally review all such incidents.

3. Destruction of Animal

When a weapon is discharged to destroy an animal, the Weapon Discharge Report will be filled out and distributed through channels to the Chief of Police. Officers will receive approval from shift supervisor prior to destroying animal.

POST SHOOTING PROCEDURES

When a shooting has occurred which results in the death of a person, the officer involved in such a shooting will as soon as possible after the incident be scheduled to undergo an emotional debriefing with the Employee Assistance Program (EAP). All debriefing sessions will remain confidential.

Psychological counseling will also be extended to family members of the officer or officers involved, if requested.

Any officer involved in a shooting in which he or she takes the life of another person will be placed on administrative leave directly upon completion of the primary report of the event. This leave will be without loss of pay or benefits, pending the result of the investigation. An assignment to administrative duty may also be in order but will not be interpreted to imply or indicate that the officer has acted improperly.

A procedural debriefing will be held at a later date for officers involved in any discharge of firearm whether or not there are injuries. The procedural debriefing will not be interpreted to imply or indicate any wrongdoing or violation of policy by participating officers. The Chief of Police will schedule such debriefing when appropriate.

EXHIBIT 5

Section 3-15
K9 POLICY**I. PURPOSE:**

The purpose of this policy is to provide guidelines for the management of the Port Authority Transit Police Dept. K9 Teams and the use of K9's and Handlers in the field of operations. Because of a superior sense of smell, hearing and potential aggressiveness, the trained law enforcement K9 is a valuable supplement to Police personnel. However, the utilization of K9's requires adherence to procedures that properly control their use of force potential and channel their specialized capabilities into legally acceptable crime prevention and control activities. Police K9 Teams are maintained by the Port Authority Transit Police as a valuable law enforcement tool for use in criminal apprehension, evidence detection, explosive detection, locating both missing/criminal persons, control of civil disturbances and public relations activities. The effectiveness of the K9 teams is dependent upon the intelligent application of their capabilities by all Police personnel.

II. K9 UNIT:

The K9 Unit of the Port Authority Transit Police will consist of a Police Service Dog (K9) owned by the Agency and trained in the performance of special duties designated by the Chief Of Police. The handler shall be a sworn Police Officer with the Port Authority (K9 Officer) who is trained in the operation, deployment and care of the K9. This Officer shall be selected to the K9 Unit by guidelines set forth by the Chief Of Police.

III. SUPERVISION:

K9 Officers are Police Officers first and will abide by the same rules, regulations, orders, directives that govern all members of the Port Authority Transit Police. K9 Officers are under the general supervision of the shift supervisor of the shift that they are working. All matters relating specifically to the K9 unit shall be the responsibility of the K9 Unit Supervisor designated by the Chief Of Police. K9 Officers are to direct any problems involving them or their K9 to the K9 Unit Supervisor. The K9 Supervisor has the oversight responsibility for the administrative and training needs of the Unit. The K9 Supervisors responsibilities are to provide:

1. Assist and aid in selecting Police Service Dogs for the Unit,
2. Oversee the training of the K9 teams,
3. Prepare demonstration schedules for the K9 Officers,
4. Maintain statistical files if required by the Chief Of Police,
5. Order supplies and equipment (when properly approved) for the proper function of the Unit,

6. Maintain relations with the designated Veterinarian,
7. Prepare K9 Unit budget requests and submit them to the Chief Of Police,
8. Handle K9 correspondence,
9. Oversee K9 maintenance training classes,
10. Assist the Shift Supervisors with the proper knowledge necessary for the deployment of the K9 Units in the field of operations,
11. Receive and make available current or updated information regarding training seminars,
12. Coordinates events and /or materials related to maintaining and supporting the K9 Team,
13. Act as a liaison with Command elements within the Department,
14. Establish and maintain a good working relationship between the K9 Teams and other Police/Agency Personnel,
15. And receive orders from administrative personnel and inform K9 Officers.

IV. EQUIPMENT/UNIFORMS:

The K9 Officer is responsible for care and condition of all equipment issued to them for the use and training of their K9. All equipment shall be inspected regularly and kept in good working condition. Any lost or damaged equipment shall be reported to the K9 Supervisor. The K9 Officer, because of duties that extend beyond the range of a Patrol Officer, will be required to wear a specialized uniform that will be maintained through the Officers allowance. Officers are expected to maintain a professional appearance while on Duty.

V. K9 VEHICLES/KENNELS:

Each K9 Officer will be assigned a marked K9 patrol vehicle that the Officer will be required to store at his/her residence while the K9 remains in service. This vehicle will only be used for Official Police related duties. The K9 vehicle will be used solely for K9 patrol purposes and will not be used for any other patrol duty or by a non-K9 Officer, unless an emergency situation dictates the need to use such vehicle. The K9 compartment of the vehicle must be kept clean /sanitary at all times. These compartments will be subject to routine inspections by the K9 Supervisor. While the K9 is inside the vehicle, the inside temperature must be safely maintained via the thermometer (heat monitoring system). Windows shall be kept open enough to allow sufficient airflow into the K9 compartment. When the K9 Officer leaves the vehicle unattended without the K9, the vehicle will be locked to prevent entry by unauthorized personnel and the K9 will be secured within the compartment. K9

vehicles will be stored at the Police Station when the K9 Officer will be away from home for an extended period of time (3 or more days). When the Police Department provides a fixed outdoor kennel at the Officers residence, the Officer will be required to clean and maintain the Kennel and regularly sanitize the K9's living quarters. The Kennel shall be posted with warning signs to prohibit civilians from approaching the K9 and will be locked when the K9 is left unattended. The K9 Officer shall take the necessary steps to protect the K9 from unsafe or uncomfortable effects of the weather. If dangerous weather conditions are present or forecast (i.e.: extreme heat/cold storms) the K9 shall be removed from the outdoor kennel and brought to a place of safety inside the Officers Home.

VI. DUTIES:

The duties of the K9 Unit (Officer) will include, but not be limited to the following: The K9 Officer will engage in regular duties of a sworn Police Officer and will patrol areas on foot or in a vehicle as assigned. The K9 Officer will prepare and complete all reports required of a Patrol Officer except that of accident reports which he/she is not required to take unless no other Patrol Officer is available to take such report. In addition to all other required reports the K9 Officer will complete K9 Reports (i.e.: K9 Use report, K9 training Report, K9 apprehension report, K9 veterinary report). The K9 Officer will respond to calls for service when dispatched or requested by a Patrol Officer however the decision to deploy the Police K9 to a specific operation shall be the responsibility of the on-scene supervisor after conferring with the K9 Officer. The K9 Officer shall have the final decision not to deploy the K9. It is the responsibility of the K9 Officer to, when necessary, explain the K9's ability to the requesting Officer and determine if the K9's deployment is appropriate. All requests for Mutual Aid from other jurisdictions shall be coordinated and approved by the on-duty shift supervisor. However, subsequent to a review of the situation, the decision to physically deploy the K9 to a specific operation will remain with the Handler. If assistance to another agency is granted, the K9 Officer will have an additional Port Authority Police Officer sent to assist in the deployment of the Team.

VII. K9 OPERATIONS:

Tracking (non criminal) – A K9 Team may be utilized to track the scent trail of and locate humans. Examples of non criminal tracking would be missing children/persons, lost elderly or psychiatric patients. In the case of a non-criminal track the Patrol Officers should attempt to locate the exact area the missing person was last seen, and relay this information to the K9 Officer. All non criminal tracks should be done on a tracking lead however the K9 Officer should, if possible, explain to the family of the missing person that there is a risk of an accidental bite. The Family's approval should be obtained before the K9 is deployed.

Tracking (criminal) – When a suspect flees and contact is lost, Patrol Officers should attempt to pinpoint the area the suspect was last seen. This area should be protected from contamination and shown to the K9 Officer. The Patrol Officers should make an effort to set up a perimeter around the area to block the suspect's path of escape. If possible any unnecessary foot traffic should be avoided in the

area where the suspect was last sent to avoid any type of contamination that could make the track more difficult for the K9 Team.

Area Searches – A K9 can be used effectively to search an area for hidden suspects who may be detected by scent or sound. When a suspect flees into an area where he may hide or conceal himself, unless in “hot pursuit,” the Patrol Officers should not pursue him. Rather an evaluation of the need for a K9 team should be made if a crime has been committed and the suspect may be present. If the search is to be conducted in a locked or fenced in area, Police Communications shall be instructed to attempt to contact the owner to provide a key for safe entry of the K9 Team. A verbal warning or announcement shall be given stating that Police Officers are present and that a Police K9 will be released into the area if the suspect does not surrender immediately (i.e. “Port Authority Police K9 suspect surrender now or I will deploy a K9 and he will find you and bite you.” In evaluating the search area for possible deployment of a K9, supervisors and K9 Officers shall consider the following:

1. Location,
2. Time of day,
3. Potential for injuries to Officers,
4. K9 Team and citizens,
5. Whether the search should be conducted on/off lead.

Building Searches – A primary use of a Police K9 Team is locating suspects in buildings or structures where a search by Patrol Officers may create an unnecessary risk. This type of search shall be governed by the following: The perimeter of the Building itself shall be secured by Patrol Officers. Whenever possible the Building owner shall be contacted to ascertain information of employees that may still be in the building. When a K9 search is anticipated the Patrol Officers should not conduct a preliminary search of the interior. The Officers shall not enter the search area without permission of the K9 Officer. Prior to conducting the search the Officers should make sure all tenants, employees etc. are out of the building in one secure location and remain outside until the operation is complete. Prior to releasing the K9 the K9 Officer will shout warnings into the structure that a Police K9 will be released. This warning will be repeated and a reasonable amount of time should be granted for response from the criminal. This warning shall be repeated inside the structure as the K9 Officer sees fit because buildings vary in size. (i.e. “Port Authority Police K9 surrender now or I will release a Police K9 and he will find you and bite you.”

Crowd Control – Experience has shown that K9 Teams can provide valuable assistance in crowd control. However, some types of crowd control do not warrant the presence or use of a K9 Team. These include situations where the use of K9's would be divisive and psychologically damaging and may even create a

more serious situation by disrupting a peaceful demonstration. A K9 deployment in a crowd control situation constitutes a "show of force" and should be approved by the on Duty Supervisor. If approval is granted the following procedures should be followed: The K9 should remain on lead at all times, No offensive action shall be taken unless instructed by the on Duty Supervisor or when the K9 Officer reasonably believes there is a threat of injury to Officers, the K9, or innocent citizens.

VIII. CRIMINAL APPREHENSION/ARREST:

A K9 bite during an apprehension of a suspect will be classified as a use of force incident. Thus, a K9 Officer must exercise good judgment when the possibility of an injury to a suspect exists. Port Authority Police K9's are considered less lethal weapons in use of force incidents so when deployed the K9 Officer will consider the following:

1. The type and severity of the crime,
2. Whether the suspect poses an immediate threat to the safety of Officers or the public,
3. Whether the suspect is actively resisting arrest or attempting to avoid arrest by flight.

When a K9 is used to make an apprehension the K9 Officer shall, as soon as the suspect is under control, command the K9 to release the suspect. At no time will a K9 be used in an apprehension situation for any summary offenses or to intimidate a suspect after the suspect has been apprehended and under control of Officers. This, however, should not be confused with a K9 escort where the K9 remains on lead and is present while Officers may be placing a suspect inside a containment area (i.e. Police vehicle, Holding Cell). In any instance where the Handler encourages the K9 to make any unjustified apprehension on a person or takes part in any activity in violation of Port Authority Police Department regulations, that K9 Officer shall be subject to proper disciplinary action/or elimination from the K9 Unit.

IX. K9 APPREHENSIONS OF SUSPECT/INJURY TO CITIZEN/HANDLER INJURY:

The use of specially trained Police K9's for law enforcement purposes constitutes a real or implied use of force. Therefore, as in other cases, K9 Officers may employ only that degree of force that is reasonable under circumstances known to the Officer to apprehend or secure a suspect as governed by Port Authority Police Departments Standards. In all cases where a Police K9 is deployed or involved, a K9 Deployment (Usage Report) shall be completed. Whenever a Police K9 apprehends (bites) an individual, whether in the line of duty or not, the K9 Officer shall:

1. Summon a Supervisor and Emergency Medical Personnel to the scene.

2. Have the affected area examined to determine the seriousness of the bite/wound.
3. Take color photographs of the affected area (if possible, photographs should be taken prior to, as well as after medical treatment.
4. Complete a K9 Usage report: This report must detail circumstances surrounding the incident, identity of the individual involved as well as witness, the extent of injury and measures taken in response to the incident. This report shall be completed as soon as possible and submitted through the chain of command.

In the event a K9 Officer is injured; fellow Officers shall take the following steps:

1. Do not approach the K9 or K9 Officer,
2. Do not attempt to give first aid unless the injury is life threatening,
3. Attempt to have the K9 Officer control his K9,
4. Contact another K9 Officer for assistance or the Handlers Family.

X. GENERAL GUIDELINES/DUTIES OF PATROL OFFICERS:

For the safety of the K9 Officer, the general public and themselves, all members of the Port Authority Police Department shall comply with the following guidelines when in the presence of a K9 Team:

1. Never agitate, engage in horseplay or use "K9 commands" without the permission of the K9 Officer.
2. Always maintain a safe distance from the K9 team and make the K9 Officer aware of your presence and movements should he(K9 Officer) be engaged in K9 related matters.
3. Do not attempt to pet or feed the K9 without permission of the K9 Officer.
4. Should a Patrol Officer be confronted by a K9 the best tactic is to stand still and avoid any sudden movement or eye contact. Any sudden movements may bring about an apprehension. However, in the case of an accidental bite the Patrol Officer should not struggle or attempt to harm the K9 but rather notify the K9 Officer/Police Communications via radio. In the event an Officer is accidentally bit see (IX).

Violations of the above conditions could result in disciplinary actions being taken against the Officer(s).

XI. TRAINING/HEALTHCARE OF K9:

Port Authority Police K9 Officers shall maintain a membership in the North American Police Work Dog Association and train in accordance with the Standards established which is 16 hours a month. The Officers will remain a member "Good Standing" as long as they are active in the K9 Unit. All K9 Teams will maintain a yearly certification in all areas of Utility/Explosives, for which the K9 will be utilized, as per N.A.P.W.D.A. standards. The cost of this membership and any other membership beneficial to the K9 Unit and approved by the Chief Of Police will be covered by the Port Authority Police Department. All Departmental Police K9's will receive regular veterinary examinations and will receive all recommended vaccinations. In the event a Department K9 requires non-emergency veterinary care, the K9 Officer shall notify the K9 Unit supervisor prior to making the appointment with the Departments authorized veterinarian. In the event of a K9 life threatening medical emergency, the K9 Officer shall immediately transport the K9 to the designated K9 Trauma Center for immediate treatment. When possible the K9 Supervisor as well as the on duty Supervisor should be made aware of the situation. The cost of all K9 medical treatment (non/emergency) will be handled by the Port Authority Police Department while the K9 is classified as a "working Police K9". The K9 Officer is also responsible for maintaining proper feeding/grooming standards for the K9. When it is decided that the K9 is no longer able to perform its duties to the fullest the decision will be made to retire the K9. When this occurs the K9 Officer assumes responsibility for the retired Service Dog.

XII. EXPLOSIVE DETECTION TRAINING AIDS:

The Port Authority PD shall maintain on premises, in a designated area, a Type II Explosive Storage Magazine for the purpose of Explosive Detection K9 Training. The magazine will be approved by an Alcohol Tobacco and Firearms Inspector (ATF) as well as an agent from the Pennsylvania Dept. Of Environmental Protection and will not exceed 50 pounds of Explosives. On a designated area of the magazine will be posted a current copy of the PaDEP magazine storage license as well as an inventory of the stored explosives. The PaDEP explosive purchase permit will remain with the Chief Of Police and/or K9 Supervisor and both permits shall be renewed yearly. The magazine shall also have a log sheet that will be utilized when any explosive is removed from the magazine for the purpose of K9 training. The K9 Officer that removes that explosives will document the name/amount of the explosive and the times it was removed/returned. Specific Keys for the magazine will be maintained by the K9 Officers and the Chief Of Police and /or K9 Supervisor. If keys to the magazine are lost/misplaced, the K9 Officer should report this immediately to the K9 Supervisor. Also, should there be a theft or loss of explosive material it should be reported immediately to the K9 Supervisor who will notify the ATF (1-888-ATF-2662). The designated K9 Supervisor shall be responsible for maintaining the Type II magazine in accordance with the regulations set forth by the ATF and Pennsylvania Dept Of Environmental Protection. At no time is the Type II magazine be used to store unapproved explosives or any item that is classified as an IED (improvised explosive device). In the event that explosive trainings are to transported by vehicle, they will be done so by utilizing an approved Explosive Storage Day box.

**XIII. DUTIES OF THE PORT AUTHORITY POLICE COMMUNICATIONS
PERSONNEL:**

In the event of a request from another Law Enforcement Agency, Communications Personnel shall immediately advise the Shift Supervisor on the particulars of the request. The Shift Supervisor will be responsible for approving the request and notifying the K9 Officer.

XIV. REQUEST FOR PUBLIC DEMONSTRATION:

The Port Authority Police K9 unit may give public demonstrations to interested group(s) only on approval by the Chief Of Police.

EXHIBIT 6

Confabulating: No

Obsessive: No

AFFECT

Yes No

Appropriate: Yes

Inappropriate: No

Suspicious: No

Anxious: No

Fearful: No

Angry: No

Elevated: No

Labile: No

Tearful: No

Blunted: No

Flat: No

Sad: No

COGNITIVE FUNCTION

Intellect: (Check if Yes): Average

Orientation: (Check if Yes): Person, Place, Time

THOUGHT CONTENT

Delusions: No

Hallucinations: Yes

BRUCE STATED HE HEARS VOICES WHEN HE'S NOT ON MEDICATION.

Hopelessness: No

Helplessness: No

Worthlessness: No

Guilt: No

Paranoid: No

MEMORY IMPAIRMENT

Short Term: No

Long Term: No

Internal Motivation: Fair

External Motivation: Good

Judgment: Poor

Insight: Fair

CONSUMER STRENGTHS

Consumer's Strengths: .

"I'M GOOD AT PLAYING FOOTBALL, BASKETBALL AND DOMINOS. AND I LOVE TO COOK."

DIAGNOSTIC IMPRESSION

Axis I: Clinical Disorders; Other Conditions That May be a Focus of Clinical Attention

Primary: 295.90 - UNSPEC SCHIZOPHRENIA, UNSPEC STATE

Secondary: 296.80 - 03 - BIPOLAR DISORDER, UNSPECIFIED

Axis II: Personality Disorders and Mental Retardation

Primary: 799.9 - DIAGNOSIS DEFERRED ON AXIS II

Axis III: General Medical Conditions

Primary: NONE

Stressors: Occupational, Housing, Economic, Access Healthcare

Axis V: Global Assessment of Functioning (GAF) Score: 46

ADDITIONAL COMMENTS**Additional Comments: :**

BRUCE WANT TO SEE A DOCTOR FOR MEDICATION MANAGEMENT. HE MAY CONSIDER SEEING A THERAPIST AS WELL. BRUCE WAS SCHEDULED TO MEET WITH DENNIS ALEXY ON 9/19/14@9AM TO BEGIN INDIVIDUALIZED OUTPATIENT TREATMENT SERVICES. HE WAS ALSO SCHEDULED TO MEET WITH MICHELE G. FOR A BCM REFERRAL ON 9/22/14@1:15PM. HIS MEDICATION NECESSITY FORM WAS COMPLETED AND SIGNED AND WILL BE MAILED BACK TO THE DPW OFFICE TODAY.

Employee Signature*Melody Day, BA*

9/18/14 11:54 AM
Melody Day
B.A.

Consumer Signature*[Handwritten Signature]*

9/18/14 11:12 AM

Supervisor Signature*Dawn Houston, MS*

9/23/14 12:28 PM
Dawn Houston
M.S.

*[Handwritten Signature]***Supervisor's Signature**

Approved by RLOBO on 9/19/14

Ronald Lobo, Psychiatrist, M.D. , Medical Director

PSYCHIATRIC HISTORY

MENTAL HEALTH

Outpatient: Yes: Specify Next or Last Appointment

WASHINGTON COMMUNITIES - 3 YEARS AS A KID STARTING IN THE 5TH GRADE

Inpatient: None

Family Psychiatric History / Treatment: :

NONE REPORTED

VEGETATIVE DISTURBANCES

VEGETATIVE DISTURBANCES: (Y if present/describe, N if not)

Yes No

Sleep: Yes

"THAT'S WHY I'M TAKING THE BENADRYL." HE HAS TAKEN SLEEP MEDICATION FOR 4 YEARS.

Appetite: No

Concentration: No

MEDICAL HISTORY

Medical Profile Details:

Date Created:09/18/2014Created By:Melody Day

Vision:Normal with correction

Hearing:Normal without correction

Mobility:Walks independently

Medical Conditions:Family Hx of Diabetes, Family Hx of Hypertension, Family Hx of Cardiovascular Disease

Current Medications / Dosages / Last Dose:

Medication:Benadryl 25 mg capsule

Start Date:9/18/2014

Dosage:3 tabs

Frequency:daily

Provider:

Medication:Risperdal 3 mg tablet

Start Date:9/18/2014

Dosage:1 tab

Frequency:daily

Provider:

Do you have a Medical Advanced Directive? (A Living Will directs your care when you are unable to do so): No - Information not requested.

Do you have a Mental Health Advanced Directive? (Directs your care when you are unable to do so): No - Information not requested.

Check all conditions that apply:

Possibility of Recent Exposure (Y if present; N if not)

Pregnancy: N/A

SUBSTANCE ABUSE HISTORY

TREATMENT

SUBSTANCE ABUSE / ADDICTIONS TREATMENT

Outpatient: None

Inpatient: None

Family Substance Abuse History / Treatment: :

NONE REPORTED

Cigarette Smoking Status: Current everyday smoker

SUBSTANCE USE HISTORY

Current Usage: (within last 30 days): Yes

EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CALISIA KELLEY; and
JOHNNIE MAE KELLEY,
Co-Administrators of the
ESTATE OF BRUCE KELLEY,
JR., deceased,

Plaintiffs,

vs.

BRIAN O'MALLEY, both in his
Official and Individual
Capacities as Sergeant for
the Allegheny County Port
Authority; and DOMINIC
RIVOTTI, in both his
Official and Individual
Capacities as Officer for
the Allegheny County Port
Authority,

Defendants,
Jointly and Severally.

CIVIL ACTION

No. 2:17-cv-01599-NBF

TRANSCRIPT

VIDEOTAPED
DEPOSITION OF
BRIAN O'MALLEY

TAKEN VIA ZOOM VIDEO CONFERENCE

WEDNESDAY, OCTOBER 7, 2020

Taken on behalf of Plaintiffs,
Calisia Kelley and Johnnie Mae
Kelley

Counsel of Record for this Party:

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1 Videotaped deposition of Brian O'Malley, taken via Zoom video
2 conference on behalf of Plaintiffs, pursuant to Rule 30 of the
3 Federal Rules of Civil Procedure, by and before Rita A. Ross, a
4 Registered Professional Reporter and a Notary Public in and for
5 the Commonwealth of Pennsylvania, on Wednesday, October 7,
6 2020, commencing at 10:18 a.m., originating from the Law Office
7 of Noah Geary, 6 South Main Street, Suite 225, Washington,
8 Pennsylvania.

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3 physically present at Mr. Geary's Washington office.)

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17 Ms. Calisia Kelley (Present at Geary Law Office)
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Brian O'Malley - Examination by Mr. Geary

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1 (Whereupon, the deposition of Brian O'Malley
2 commenced at 10:18 a.m.)

3 THE VIDEOGRAPHER: We are going on the record at
4 10:18 a.m. on Wednesday, October 7th, 2020. This video is the
5 remote videotaped deposition via Zoom video conference of Brian
6 O'Malley, taken by the plaintiff in the matter of Calisia
7 Kelley versus Brian O'Malley, filed in the United States
8 District Court for the Western District of Pennsylvania.

9 My name is Bob Pealer, videographer and computer
10 technician employed by Precise, Inc. And our court reporter is
11 Rita Ross, representing Ross Reporting Service.

12 Counsel, beginning with Plaintiff, please identify
13 yourselves for the record, and will the court reporter then
14 please swear in the witness.

15 MR. GEARY: My name is Noah Geary. I'm lawyer for
16 the plaintiffs in this case, Calisia Kelley and Johnnie Mae
17 Kelley, sister and mother of Bruce Kelley, Jr.

18 MR. EVASHAVIK: I am Greg Evashavik. I represent
19 both defendants.

20 BRIAN O'MALLEY,
21 having been first duly sworn, was examined and testified as
22 follows:

23 EXAMINATION

24 BY MR. GEARY:

25 Q. Sir, good morning. My name is Noah Geary.

Brian O'Malley - Examination by Mr. Geary

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1 Obviously, I'm the lawyer for Calisia and Johnnie Mae Kelley.

2 A. Good morning.

3 Q. Can you see me?

4 A. Yes, sir.

5 Q. And can you hear me?

6 A. Yes, sir.

7 Q. Have you ever had your deposition taken before?

8 A. No.

9 Q. Okay. So every lawyer at the beginning of a
10 deposition kind of lays out what -- you know, how -- what it is
11 and how we're to conduct ourselves. So just a couple things.

12 Number one, you're under oath, obviously, so you
13 must testify truthfully.

14 A deposition is a question-and-answer session. I go
15 first, and then Mr. Evashavik goes after me. We can go back
16 and forth a little bit after that, if necessary.

17 If my questions are unclear or vague, you can ask me
18 to repeat it or to rephrase. I'll try to make it more clear.
19 If I go too fast, you can tell me to slow down.

20 Sometimes a witness will jump in and anticipate an
21 answer and maybe talk over the lawyer a little bit or maybe the
22 lawyer kind of talks over the witness. If that happens, not a
23 big deal, but the stenographer will interrupt us and make sure
24 that -- she has to write down everything that everybody says
25 during this, and if we're talking over each other, she just

Brian O'Malley - Examination by Mr. Geary

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1 needs to separate us and make sure she gets it down.

2 If you give verbal responses, please -- some
3 witnesses will shake their head yes or no. Some witnesses will
4 answer uh-huh or huh-uh. If that happens, I'll prod you "Is
5 that a yes or a no?"

6 If you need a break, please let me know.

7 I'll show you some exhibits, and I'll ask you some
8 questions off of those exhibits. Before I do that, I want you
9 to take your time and read the entire exhibit, be comfortable
10 with it. So when I ask you questions off the exhibits, I just
11 want you to be comfortable with the exhibit before I ask you
12 questions. I think that's it.

13 Do you have any questions about any of -- any of
14 those things?

15 A. No, sir.

16 Q. Okay. Are you ready to proceed?

17 A. Yes, sir.

18 Q. Okay. Please state your name again and spell it for
19 us.

20 A. Brian O'Malley. B-r-i-a-n. O'M-a-l-l-e-y.

21 Q. And your age, please?

22 A. 47.

23 Q. And do you still work for the Port Authority Police
24 Department, sir?

25 A. Correct.

Brian O'Malley - Examination by Mr. Geary

8

1 Q. Okay. What's your rank as of today?

2 A. Lieutenant.

3 Q. And are there different levels of lieutenant or just
4 one level?

5 A. One level.

6 Q. Okay. And can you give me the -- what's the
7 hierarchy at the Port Authority as far as rank?

8 A. So it would be chief of police, lieutenant,
9 sergeant, detective sergeant, patrolman.

10 Q. Are you on duty today, sir?

11 A. Yes, sir.

12 Q. What shift are you on?

13 A. Today I work 1400 to 2200. That's 2 p to 10 p.

14 Q. Are you originally from the Pittsburgh area?

15 A. Yes.

16 Q. What part?

17 A. South Hills.

18 Q. And where did you go to high school, please?

19 A. Canevin Catholic.

20 Q. What year did you come out of there?

21 A. 1991.

22 Q. And, what, did you go to W&J for college?

23 A. Correct.

24 Q. What year did you graduate from W&J?

25 A. 1995 into '96. So '95-'96.

Brian O'Malley - Examination by Mr. Geary

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1 Q. And what was your major at W&J, please?

2 A. Sociology.

3 Q. What did you do immediately after you graduated from
4 college as far as employment or further education?

5 A. I was employed with Dietrich Industries. It's a
6 steel company in La Porte, Indiana.

7 Q. Okay. And, roughly, how long were you there?

8 A. Through that summer.

9 Q. And then what was your next employment, please?

10 A. Well, then I attended the -- I left Dietrich
11 Industries to attend the Allegheny County Police Academy.

12 Q. And there's reference in your interrogatories you
13 worked for Bean Beverage in Pittsburgh as a manager in 1996.
14 Is that correct?

15 A. Yes.

16 Q. Were you still in college at that point?

17 A. No. I had left. I -- so when I left college, it
18 was Dietrich Industries, went to the police academy. So there
19 was sort of an overlap. And then I was pre-service, so I
20 didn't have -- I didn't have a job when I left the police
21 academy because you're pre-service, so that's when I ended up
22 getting hired with Bean Beverage.

23 Q. And what do you mean "pre-service"?

24 A. So in the state of Pennsylvania, when you attend --
25 if you're not hired by an agency, you can -- you can obtain an

Brian O'Malley - Examination by Mr. Geary

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1 Act 120 certification, which is the police academy. You can
2 pay to attend various institutions. I know IUP. I attended
3 the Allegheny County Police Academy, but some -- there's some
4 college institutions where you could attend and obtain that as
5 well. So you're pre-service. You don't have a job waiting for
6 you.

7 Q. And then there's reference to a Banksville Beer in
8 Pittsburgh as a manager in '97.

9 A. That's correct.

10 Q. How long were you there roughly?

11 A. Maybe -- I believe it might have been a few months,
12 close to a year. Because that's when -- in '97 into '98 is
13 when I got hired with the Port Authority.

14 Q. Okay. So the academy, how long was the training
15 there in the academy?

16 A. So when I attended, no longer than four months. It
17 might have been 3 1/2 months, but it was no longer than four.

18 Q. Okay. And so prior to being hired by the Port
19 Authority, did you work in any job anywhere in your life in law
20 enforcement?

21 A. Briefly, I worked for the Hanover Police Department,
22 which is -- I guess it's still called Star Lake. They patrol
23 Star Lake. I worked a couple shifts out there. I don't know
24 if it's still called Star Lake.

25 Q. Who was the chief there at the time?

Brian O'Malley - Examination by Mr. Geary

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1 A. I couldn't even tell you.

2 Q. Roughly, how long were you at Hanover?

3 A. Weeks.

4 Q. Okay. Separate from Hanover, any other work
5 experience at any law enforcement agency?

6 A. No, sir.

7 Q. Did you serve in the military?

8 A. No, sir.

9 (Whereupon, Deposition Exhibit 24 was presented to
10 the witness.)

11 BY MR. GEARY:

12 Q. If you could take a look at what's Exhibit 24. It's
13 answers to interrogatories. You already answered some written
14 questions. I have some questions for you on a couple answers,
15 please. And specifically, if you could take a look at No. 20.

16 I'm sorry. I'm sorry. I'm going to ask you about
17 No. 12 first, then 20. Sorry. So let's start with No. 12.
18 Did you get a chance to reread that?

19 A. I'm reading it now. Okay.

20 Q. Have you had a chance to read that?

21 A. Yes, sir.

22 Q. Okay. So No. 12, "Did any citizen or other officer
23 or superior ever make any complaint against you for use of
24 excessive/unreasonable force during your employment with the
25 Port Authority Police Department?"

Brian O'Malley - Examination by Mr. Geary

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1 Your answer was "Yes."

2 Did I read that correctly?

3 A. Yes.

4 Q. Okay. Detail for me who made the complaint against
5 you, what -- what time frame it was, and the nature of the
6 complaint.

7 A. So that was a 2008 lawsuit. It involved -- the
8 complainant was -- well, his last name was Bugno, and it
9 resulted from an arrest. And it was a civil complaint, which
10 went to state court.

11 Q. And what were the charges that you filed against
12 that person?

13 A. I -- I did not file charges.

14 Q. Okay. What were the charges that were filed against
15 him, though. The plaintiff.

16 A. You know what, without looking at the case -- I
17 mean, this is in 2008. I can't remember the exact charges. I
18 believe it involved narcotics and resisting arrest. There may
19 have been other charges. I -- I just can't say right now. But
20 I believe it was narcotics and resisting arrest and possibly an
21 aggravated assault.

22 Q. What was the disposition of the criminal charges?

23 A. I can't say.

24 Q. And were you the only defendant named in the suit,
25 or were other officers sued as well?

Brian O'Malley - Examination by Mr. Geary

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1 A. There was another officer.

2 Q. And who was that, please?

3 A. Ron Fukas.

4 Q. Okay. And what were the -- what was the nature of
5 the allegations as far as excessive force?

6 A. Excessive force.

7 Q. I mean, like, physical? Was it physical touching,
8 or was it the use of an ASP or what was the allegation against
9 you?

10 A. So the main part of the allegation against myself
11 and Sergeant Fukas was the use of a Taser.

12 Q. Okay. And who -- who was your attorney defending
13 you in that case?

14 A. Nick Evashavik.

15 Q. And did it go to trial?

16 A. Yes, sir.

17 Q. What was the jury verdict?

18 A. The jury ruled in our favor.

19 Q. And so looking at Nos. 12 and 20 there on these
20 written interrogation, 12 was "Did any citizen, officer, or
21 superior ever make a complaint against you for excessive
22 force?"

23 And, then, 20 is were you ever actually sued. So
24 you just explained the lawsuit. Was that the only lawsuit ever
25 filed against you in your career for excessive force?

Brian O'Malley - Examination by Mr. Geary

14

1 A. Yes, sir.

2 Q. Okay. Separate from that lawsuit, were -- were any
3 complaints made against you by citizens or suspects? Complaint
4 being not a lawsuit, but a verbal or written complaint to your
5 chief or to the department.

6 A. No, sir.

7 Q. What about any other coworker make any allegation
8 against you for use of excessive or unreasonable force?

9 A. No, sir.

10 Q. So in your career, the only thing in your background
11 as far as allegations of excessive force was this lawsuit by
12 Bugno? B-u-g-n-o.

13 A. Yes. That's correct.

14 (Whereupon, Deposition Exhibit 25 was presented to
15 the witness.)

16 BY MR. GEARY:

17 Q. If we could go to the request for production of
18 documents, which is No. 25 -- Exhibit No. 25, No. 3, please. I
19 asked about dashcam video and any other type of video on No. 3.
20 And your answer was "Not applicable." Is that correct?

21 A. Yes, sir.

22 Q. So January of '016, the shooting and killing of
23 Bruce Kelley, Jr., were you wearing a body camera that day?

24 A. No, sir.

25 Q. And did the Port Authority Police Department just

Brian O'Malley - Examination by Mr. Geary

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1 not -- not have body cameras for officers at that time?

2 A. That's correct.

3 Q. Now, we'll get to the events of that day in a
4 moment. Did you drive your unit to the scene at some point
5 that day?

6 A. I drove my police car to Hamnett Station.

7 Q. And did the -- did your unit have dashcam -- dash
8 camera capabilities?

9 A. No.

10 Q. Did any of the Port Authority units have dash camera
11 capabilities?

12 A. No, sir.

13 Q. Do they have that now?

14 A. No, sir.

15 Q. If we can move to January of '016, obviously, I'm
16 going to ask you many questions about the day of this incident,
17 January 31, '016. Before we get to that, January of '016, how
18 many years had you had with the Port Authority at that point?

19 A. 18, into 19.

20 Q. And were you a K-9 officer as of January of '016?

21 A. Of January of '16?

22 Q. Yes, sir.

23 A. Yes.

24 Q. And how long had you been a K-9 officer?

25 A. Since 2003.

Brian O'Malley - Examination by Mr. Geary

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1 Q. Okay. Now, in the time period of January '016 and
2 you being a K-9 officer when you worked for the Port Authority
3 Police Department, were you always working in a role as a K-9
4 officer, or was it sometimes you were and other times you were
5 in a different type of capacity?

6 A. Clarify the other type of capacity.

7 Q. Just anything other than K-9. Just, say, you were a
8 sergeant doing, say, patrol or duties that had nothing to do
9 with K-9.

10 A. Well, K-9s are assigned to patrol.

11 Q. Okay.

12 A. So I was a sergeant assigned to patrol as well as
13 having a K-9.

14 Q. So did -- every shift you worked in January of '016,
15 in that time period, were you in the capacity as a K-9 officer?

16 A. Correct.

17 Q. Okay. And your K-9 partner was Aren. Is that
18 correct?

19 A. Correct.

20 Q. A German Shepherd?

21 A. Yes. Aren was full German Shepherd.

22 Q. Okay. Now, is it correct that you and Aren were a
23 team, a K-9 team, as far as how it's phrased?

24 A. That is -- that's a phrase that's often -- often
25 used and written down. Correct.

1 Q. And is the team you and -- and Aren, or was it, say,
2 you, another officer, and Aren?

3 A. It was myself and Aren.

4 Q. Okay. How long, as of '016, had you and Aren been a
5 K-9 team or unit?

6 A. Several years.

7 Q. Okay. And how many is several?

8 A. I think I had Aren on the street for -- it was maybe
9 three, going into four. So I don't believe it was longer than
10 four. It was maybe coming up on four.

11 Q. And in that time frame, how many other K-9 teams, or
12 units, did the Port Authority Police Department employ?

13 A. We had two other teams.

14 Q. And who were they, please?

15 A. So that was Ron Fukas, who at the time was a
16 patrolman, and Sergeant Rob DiPippa.

17 Q. And in the, say, three to four years you worked with
18 Aren, did you always work with Aren when you were working as a
19 K-9 officer?

20 A. Yes, sir.

21 Q. And DiPippa, his partner was whom? What was the
22 name of the K-9?

23 A. Arko, A-r-k-o.

24 Q. And I think you said Fukas. Can you spell Fukas,
25 please?

Brian O'Malley - Examination by Mr. Geary

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1 A. F- -- F-u-k-a-s. F-u-k-a-s. First name is Ron,
2 R-o-n.

3 Q. Thank you. And what was his K-9 partner's name?

4 A. It's slipping my mind. Cordon, C-o-r-d-o-n.

5 Q. Thank you. Now, prior to Aren, did you have a
6 different K-9 partner? A different dog?

7 A. Yes.

8 Q. Who was prior to Aren?

9 A. My partner -- my first partner's name was Lord,
10 L-o-r-d.

11 Q. What kind of dog was that, please?

12 A. German Shepherd.

13 Q. Okay. So you became a K-9 officer in '03. Is that
14 correct?

15 A. Correct.

16 Q. And Lord, was he your first partner?

17 A. Yes, sir.

18 Q. What kind of dog was Lord?

19 A. A German Shepherd.

20 Q. How long were you and Lord K-9 partners?

21 A. I think Lord passed away in '10, into '11. Around
22 that time frame.

23 Q. So how long were you and Lord partners?

24 A. Eight years. It might have been eight years.

25 Q. And then was there a K-9 partner in between Lord and

Brian O'Malley - Examination by Mr. Geary

19

1 Aren that was your partner?

2 A. No, sir.

3 Q. Was there a gap in time where you did not have a K-9
4 partner?

5 A. I mean, there's a gap for the selection period, so
6 I -- I don't know how long, but, I mean, it's -- it's -- by the
7 time -- I don't know how long that period was. It might have
8 been a couple weeks.

9 Q. Okay. But -- so you've had two K-9 partners up and
10 to the date of this incident: Lord and Aren. Is that correct?

11 A. Yes, sir.

12 Q. Okay. Explain for me, please. How did it come
13 about that you became a K-9 officer?

14 A. Post 9/11, the department chose to initiate a K-9
15 program. That program was to be patrol dogs and explosive
16 detection dogs. There was an interview process. I interviewed
17 with the chief at the time and was selected.

18 Q. Who was the chief at the time?

19 A. William McArdle.

20 Q. And at that time, '03, did the Port Authority have
21 three K-9 units?

22 MR. EVASHAVIK: '03?

23 THE WITNESS: Yeah. I was the first one.

24 BY MR. GEARY:

25 Q. Okay. Because you said about '016, there were three

Brian O'Malley - Examination by Mr. Geary

20

1 K-9 teams. Fukas, DiPippa, and yourself as of '016. So in '03
2 when it started out with K-9 teams -- the Port Authority having
3 K-9 teams -- did they start out with just one team or more than
4 one?

5 A. I was -- I was the first one.

6 Q. Okay. And Lord was your partner?

7 A. Yes, sir.

8 Q. Okay. Now, starting in '03 with Lord, you and Lord
9 obtained different credentials or certifications. Is that
10 correct?

11 A. Yes, sir.

12 Q. And who -- who issued those citations and
13 credentials to you?

14 A. The North American Police Work Dog Association.

15 Q. And was there any other agency or entity that you
16 obtained credentialing through?

17 A. With Lord, yes.

18 Q. Okay. Who else with Lord, please?

19 A. The Alcohol, Tobacco and Firearms. ATF.

20 Q. And with Lord, with the North American -- what is
21 it? -- Man Dog Work Association?

22 A. So it's the North American Police Work Dog
23 Association. N-A-P-W-D-A.

24 Q. Sorry.

25 A. Often referred to -- referred to as NAPWDA.

Brian O'Malley - Examination by Mr. Geary

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1 Q. Okay. Police Work Dog Association.

2 A. Yes.

3 Q. What -- what areas did Lord get qualified in as far
4 as drug detection, bomb sniffing, suspect apprehension, so
5 forth?

6 A. So his scent discipline -- all of our dogs up and to
7 this point -- even current -- are all explosive detection dogs.
8 And then --

9 Q. I don't mean to interrupt. I'm sorry. There was
10 just one word I didn't catch. You said his something
11 discipline.

12 A. So all -- all of our dogs, their disciplines are
13 explosive -- their scent work are all explosive detection. So
14 all of our dogs are explosive detection dogs.

15 Q. Are you saying --

16 A. So that was his scent -- that was -- his scent
17 discipline was -- Lord's discipline on the odor end was
18 explosive detection.

19 Q. And I'm sorry. Just -- are you saying "said" or
20 "scent"? I just can't get the S-word.

21 A. Scent, s- -- s-c-e-n-t. Scent. Scent discipline
22 was explosive detection.

23 Q. Okay. Thank you. Was Lord qualified or
24 credentialed in other areas separate from the explosive
25 detection?

Brian O'Malley - Examination by Mr. Geary

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1 MR. EVASHAVIK: Object to the form of the question.
2 You can answer.

3 THE WITNESS: So his patrol discipline was -- there
4 was several areas. That would be area search, tracking,
5 obedience, aggression control.

6 BY MR. GEARY:

7 Q. And what is aggression control?

8 A. So aggression control is the discipline involved in
9 making apprehensions.

10 Q. Okay. Now --

11 A. It's tied in with obedience.

12 Q. I've done some research on suspect apprehension.
13 I've read some literature on the bite-and-hold technique. I
14 don't know if -- what words you used in the training or what,
15 you know, the proper usage in the industry is, so I'll ask.
16 Suspect apprehension, that was included under aggression
17 control?

18 A. Correct.

19 Q. And as of '03, was there something called a
20 bite-and-hold technique?

21 A. I don't know.

22 Q. Okay. What were the -- for suspect apprehension, as
23 of '03, what were the techniques you were trained under to
24 apprehend a suspect?

25 A. Can you clarify?

1 Q. Right. I read things about bite and hold where the
2 K-9 officer deploys the dog and the dog is supposed to bite a
3 body part or an arm of the suspect to get the suspect to comply
4 or otherwise drop a weapon. So some literature said
5 "bite-and-hold technique" under suspect apprehension. So I
6 think you just said -- well, I'm just asking. On suspect
7 apprehension, what techniques were you trained to deploy Lord?

8 A. So the techniques taught were suspect apprehension
9 on arm, shoulders.

10 Q. Was it not called the bite-and-hold technique?

11 A. No. It was aggression control.

12 Q. Okay. So for suspect apprehension, if you deployed
13 Lord, just generally speaking, Lord was -- Lord was to do what?

14 A. Well, I don't know what's -- you say "deployed."
15 How do you mean?

16 Q. Well, say, in the training, what would -- yeah.
17 What would be the situations where it would be appropriate and
18 necessary to deploy Lord to apprehend a suspect?

19 A. In training?

20 Q. Yes.

21 A. Well, there's different facets, but the garden
22 variety would be training a dog up to using a bite suit.

23 Q. Okay. And what would -- what would be the criteria
24 you were to consider for when it would be appropriate and
25 necessary to deploy Lord versus, well, maybe this is not the

1 right situation to deploy Lord to apprehend a suspect?

2 MR. EVASHAVIK: Are you still referring to training?

3 MR. GEARY: Yes.

4 THE WITNESS: Well, I mean, if you are training,
5 you're setting yourself up for a training scenario. So I -- I
6 don't understand your question. If it's training, then you've
7 set the scenario up to train.

8 BY MR. GEARY:

9 Q. Right. And what scenarios were set up that you were
10 trained in?

11 A. Well, you -- at times, you would have a person in a
12 bite suit. At times, you would have a person -- the decoy, as
13 it's known -- to be not in a bite suit because the dog would be
14 in a muzzle. So those are two that are probably used
15 predominantly.

16 Q. Is decoy the suspect?

17 A. Yeah. So the decoy is often referred to as the
18 trainer who acts in a way as the suspect.

19 Q. And the bite suit -- I think I know what you mean,
20 but can you describe the bite suit?

21 A. Well, there's several -- there's many kinds. But a
22 bite suit garden variety would be a jacket and a set of pants
23 that cover your entire body minus your feet and your hands and
24 your head, that give protection while you're decoying for a
25 particular dog through a scenario. So it's a heavier -- sort

1 of the material that would be similar to, like, a heavy-duty
2 fire hose that fire departments use. It's that type of heavy
3 material, if you were to feel it. But there's several kinds,
4 so that's -- that's sort of the garden variety kind.

5 Q. And what would be the scenarios that you
6 participated in with Lord in those training sessions? Again,
7 the time frame right now I'm focusing on, say, '03 when you
8 started out.

9 A. In training. Correct?

10 Q. Yes, sir.

11 A. So those would be agitation, building searches in a
12 bite suit, suspect mocking, running from a particular area,
13 pretending to be a fleeing felon in a bite suit. A person
14 attacking the -- the decoy would attack the officer and mimic
15 an attack on the officer to get a reaction from the dog, to
16 make an apprehension. So anything that the dog, or Lord, would
17 see on the street, we trained.

18 Q. And in some of those scenarios, would the decoy, or
19 suspect, be armed?

20 A. There is a part -- so clarify being armed.

21 Q. Well, would the decoy, you know, posing as a
22 suspect, have a knife or, say, a rubber knife in his hand, a
23 weapon, or a gun?

24 A. No for the knife.

25 Q. What about gun?

1 A. Gunfire is used for a certification test.

2 Q. Okay. So in any of those scenarios with Lord, were
3 you trained with Lord in scenarios where the suspect has a gun?

4 A. Yes. Because you acclimate the K-9 to gunfire.

5 Q. Okay. What about --

6 A. It's blanks. Blanks.

7 Q. I'm sorry.

8 THE REPORTER: I didn't hear.

9 THE WITNESS: It's a blank -- it's a blank gun,
10 obviously, because you're -- you know, you're not on a gun
11 range. Yeah. So they're shooting a blank gun, so mimicking
12 gunfire. I should clarify.

13 BY MR. GEARY:

14 Q. No. I get it.

15 You said no as to the knife. Gun, yes. Any other
16 type of weapon that the decoy would -- would possess in these
17 scenarios where Lord was trained in suspect apprehension?

18 A. So there's -- the other tool that's used by decoys
19 are what's called a bamboo stick, an agitation stick, padded
20 schlags. And what those are used for is to act as a
21 distraction device when the dog is decoying and progressing
22 through training.

23 Q. And so can you explain for me how -- how would the
24 agitation stick be used in the training of the -- of the dog?

25 A. Well, when a dog starts to exhibit the right amount

1 of confidence and you start to progress through training, any
2 type of secondary device used as a distraction starts to get
3 implemented in training.

4 So, for instance, the bamboo stick is a rattle
5 stick. And it does just that; it rattles. So you're trying to
6 elicit a response from the dog that would go against any type
7 of confidence that you're trying to build up. So if you rattle
8 and the dog -- if you rattle the stick and the dog backs off,
9 then you know that, you know, there's been that type of -- you
10 want to try to build on that confidence of him being around
11 that rattle. That sound may not be -- he may not like that
12 sound. So those -- those are how those tools are used.

13 Dogs -- or Lord, the dogs that we train with, we
14 never hit the dog. So although those are called -- like, it's
15 a padded schlag and a bamboo stick, the dogs are never hit with
16 those in our training.

17 Q. And what's the difference between an agitation stick
18 and the bamboo stick?

19 A. Nothing really.

20 Q. I assume the agitation stick is silent, does not
21 make noise.

22 A. So a -- that's referred to as, like, a padded
23 schlag. And it's, again, just something that you are
24 introducing -- introducing into the training to act as a
25 confidence builder and to elicit a response. So it's just

1 something that the decoy can hold and -- and swing around and
2 stand above the dog to try to act as a distraction to see what
3 kind of response you've you're training into them.

4 MR. GEARY: Did you get "schlag"?

5 THE REPORTER: Uh-huh.

6 MR. GEARY: Okay. I just asked the stenographer if
7 she got "schlag" down.

8 THE WITNESS: Yeah. Don't ask me for spelling on
9 that one. I'm not real sure.

10 BY MR. GEARY:

11 Q. Now, as far as a gun with blanks in it, with Lord,
12 did you and Lord undergo training on suspect apprehension where
13 the decoy is holding a gun?

14 A. I do not think I did that with Lord.

15 Q. Okay. At any point in your partnership with Lord,
16 did you do -- did you do that type of training?

17 A. I can't recall if there was a changeover in the
18 NAPWDA training standards. There are times where the board
19 looks at their standards and, when it comes to gunfire, that
20 has changed over the years. So I don't know if Lord -- he may
21 have partaken in where the -- the decoy mocked a gun battle. I
22 know he was exposed to the blanks as well as being exposed to
23 live fire on our range when we would go to range days. So in
24 his time frame, I don't know if that was part of the
25 certification test. I would have to go back and look.

1 Q. And you say Lord was certified or credentialed
2 through ATF at some point?

3 A. Yes, sir.

4 Q. Was that prior to Lord obtaining Lord's
5 certification through NAPWDA?

6 A. Well, I mean, we have -- we obtain NAPWDA
7 certification every year. But Lord's certification through the
8 ATF was in the latter part of his career. It might have been
9 in '08. It was for explosive detection.

10 Q. And was that the only thing for the ATF, their
11 purposes, explosive detection?

12 A. Yes, sir.

13 Q. Okay. And did you ever -- and is the word "deploy"?
14 When I say the word "deploy," just from the literature, it's if
15 you, using layman's terms, like sic the dog on a suspect for
16 suspect apprehension. The literature seems to use the word
17 "deploy." I don't know if that's the correct word. What's the
18 proper word there?

19 A. Well, for us, it would just be a K-9 deployment, but
20 that carries many terms. If I say I deployed -- it was a K-9
21 deployment on the aggression part of that, then that would
22 mean, to me, either an apprehension with a bite or an
23 apprehension with a no-bite.

24 Q. Okay. Thank you. Can you explain to me the
25 difference between apprehension with bite versus apprehension

1 with no bite? How was Lord trained -- and you trained?

2 A. So in your training, if you deploy a K-9 in a felony
3 situation and suspect or suspects are running and the suspect
4 surrenders, you would use a call-off technique. And so
5 although -- that would be a deployment no bite because the
6 suspect surrendered. You do a recall on your dog, and you call
7 the dog back to the heel because the person is no longer
8 resisting arrest and fleeing.

9 Q. In that scenario, in the moment that you deployed
10 the dog, if the suspect had not yet surrendered, what was the
11 dog supposed to do in that deployment?

12 A. That would be make an apprehension.

13 Q. And how was the dog to do that?

14 A. How he was trained.

15 Q. And how was he trained?

16 A. The arm/shoulder area.

17 Q. And what about the arm/shoulder area? What exactly
18 was the dog supposed to do to the suspect to effect a
19 successful deployment?

20 A. To make an apprehension.

21 Q. And how so?

22 A. With -- with his mouth.

23 Q. Okay. Yeah. I didn't know if we're talking about
24 the no-bite technique versus the bite technique. Let's start
25 with the no-bite technique.

1 MR. EVASHAVIK: I'm going to object to the form of
2 the question.

3 BY MR. GEARY:

4 Q. Did you explain -- did you explain that there were
5 two techniques for suspect apprehension, and one was the bite
6 technique and one was no-bite?

7 A. So I said the two techniques that are used in the
8 certification are the -- it would be a deployment. We talked
9 about deployment. It was deployment, either bite or no bite.

10 Q. Okay. And when you deploy the dog, though, is the
11 initial intent that the dog is to bite the suspect?

12 A. Yes, sir.

13 Q. And on the arm or the shoulder. Is that correct?

14 A. Yeah. Arm, shoulder, middle of the back. But
15 that -- that area.

16 Q. Any -- on the arm, any particular area on the arm?
17 Say, you know, lower arm? Upper arm?

18 A. I think that would depend on the suspect, if he's
19 running away. But physiologically how a body is moving, it's
20 hard to say. So if they always target, like, an elbow or it's
21 just where the dog has acquisition at the time. So it's hard
22 to say any particular area. It's just those areas that we
23 trained in.

24 Q. And so was there a specific -- in the training,
25 was -- was Lord supposed to bite, say, the upper arm as opposed

1 to the lower arm of a suspect?

2 A. You pointed -- you pointed to your bicep, though.
3 Is that where you were referring to?

4 Q. Yeah. I just gestured to upper arm versus lower arm
5 on my own arm.

6 A. No.

7 Q. Okay. There's no preference as to what area of the
8 arm the dog is to bite?

9 A. Well, you're pointing to, like, your front bi- --
10 are you demonstrating it, or...

11 Q. I have -- I have no -- yeah, I have no idea. I just
12 gestured to my arm, so...

13 A. Okay. No. I think it's just on the arm/shoulder
14 area, that back area, from right to left. So those areas are
15 trained.

16 Q. So it can be anywhere on the arm?

17 A. Running away, it would be on the triceps/shoulder
18 area, to across the back, to the other triceps/shoulder area.

19 Q. And what if the suspect is stationary, not moving,
20 and, say, facing the dog?

21 A. Then it would be an apprehension to the chest area.

22 Q. And is that an apprehension with a bite?

23 A. Well, I don't know what scenario we're using, so...

24 Q. Well, I just want to go through each scenario you
25 were trained in as far as, say, apprehension of any suspect

1 with the bite technique.

2 A. So we're not talking no bite now. Right?

3 Q. Right. I'd like to --

4 A. I'll -- I'll base this off what you just said. So
5 if the suspect is facing me and I have grounds to deploy my K-9
6 to make an apprehension?

7 Q. Yes.

8 A. And he does not surrender. Correct?

9 Q. Correct.

10 A. Okay. So if he's facing me. So then that bite --
11 we teach our dogs that could be in the frontal area. Correct.

12 Q. And specifically the chest?

13 A. It could be the chest, shoulders.

14 Q. Is the dog trained to do anything other than bite?

15 A. No, sir.

16 Q. Is the dog trained to, say, just jump up and lunge
17 and impact the suspect and knock the suspect backwards or to
18 the ground?

19 A. No, sir.

20 Q. And we were -- I prefaced all this talking about
21 '03, and I just -- as of '016, January, the date of this
22 incident, was Aren trained to do anything other than bite?

23 A. No, sir.

24 MR. EVASHAVIK: Well, I'm going to object to the
25 form of the question. Are you limiting that to an

1 apprehension? Because he may have had training in other areas
2 as well.

3 MR. GEARY: Yeah. No. I mean, we'll we'll
4 get -- okay. We'll just -- we'll deal with Aren separately.
5 But I follow you on the bite technique.

6 BY MR. GEARY:

7 Q. And just so we're clear, so the dog is to bite. And
8 in the training, the dog is not trained to, say, lunge and
9 knock the suspect backwards or over?

10 MR. EVASHAVIK: Again, object to the form of the
11 question. You mean without a bite?

12 MR. GEARY: With or without.

13 THE WITNESS: I can't answer that. You're using two
14 different -- you're saying two different things. Are you
15 saying with their paws, knock them over?

16 BY MR. GEARY:

17 Q. Or however. Yeah. Is the dog trained to --
18 separate from biting, as an alternative or in addition to
19 biting, is the dog trained to, like, knock the suspect
20 backwards or knock the suspect over?

21 A. I think that would happen from the suspect, not the
22 dog.

23 Q. Right. Well, I'm just asking on the training. What
24 the dog specifically is trained to do. What the dog is trained
25 to do when it's released for a suspect apprehension.

1 A. Trained to make apprehension.

2 Q. Okay. And that's through bite only?

3 A. Yes.

4 Q. Okay. Tell me about the -- the no-bite scenario.

5 A. A no-bite would be -- well, paint the picture. I
6 don't know how you want to use that. Are you referring to the
7 fleeing person again?

8 Q. Well, let's say the person is not fleeing. They're
9 stationary, and they're facing the dog.

10 A. So -- and they surrender?

11 Q. No surrender. In this scenario so far, no surrender
12 by the suspect.

13 A. So then it would be an apprehension then.

14 Q. Okay. And what does that mean? On an apprehension
15 in that scenario we just explained, what is the dog supposed to
16 do?

17 A. Make an apprehension in the areas we just talked
18 about.

19 Q. And make an apprehension by biting?

20 A. Yes.

21 Q. Okay. Now, did you say there's an apprehension
22 where -- that does not involve the dog biting a suspect?

23 A. No.

24 Q. With the NAPWDA, you were -- both you and Lord were,
25 what, certified yearly through that entity?

1 A. Yes, sir.

2 Q. And what were the requirements, please? Yearly
3 requirements.

4 A. Well, on the -- there's two different -- there was a
5 test that you would take in front of a master trainer who is
6 certified with the North American Police Work Dog in the
7 various disciplines that you wanted to certify in, the ones
8 that we -- we just talked about that were mentioned.

9 Q. And the master trainer, is that -- is that someone
10 who is associated with NAPWDA, or is it someone, say, from a
11 different entity or agency?

12 A. The master trainers were from NAPWDA.

13 Q. Okay. And how much training on suspect apprehension
14 did -- let's focus on Aren now -- was Aren required to
15 participate in and complete in the years leading up to '016,
16 including '016?

17 A. It was the same standards through NAPWDA.

18 Q. Okay. What was the yearly requirement for suspect
19 apprehension training for you and the dog?

20 A. Are you referring to the test?

21 Q. Just -- just the training and any other requirements
22 you were obligated to undergo to obtain the certification.

23 A. Well, the training is 16 hours a month that we did.
24 But we didn't train just in suspect apprehension. We trained
25 in tracking, area search, building search, explosive detection.

1 So that was training monthly, four hours a week.

2 Q. And where would the four hours a week training go?
3 Again, we're focusing on Aren, say, '014, '015, '016. Where
4 would the training occur?

5 A. All over the county.

6 Q. Okay. And -- and the trainer would be the person
7 you -- you identified as the master trainer?

8 A. Yes. There were several master trainers that we
9 used, that we, as a training group -- and that group consists
10 of our dogs and dogs from various other agencies.

11 Q. So in the time period of '015, January of '016 when
12 you and Aren would undergo these four hours a week training on
13 suspect apprehension, who was the master trainer?

14 A. There were several. Pat Moloney. Bill Sombo.
15 Franco Angelini. Bill Castle. I think that's it.

16 Q. And you said the requirement of the NAPWDA was 16
17 hours a month. Is that right?

18 A. Yes. For the disciplines that you're certifying on,
19 yes.

20 Q. Okay. How many -- was there a minimum requirement
21 of how many of those 16 hours a month had to be dedicated to
22 suspect apprehension?

23 A. I'm not sure if that's mentioned in the bylaws.
24 That's more -- that's -- the training weekly is -- is left up
25 to the handlers and the unit itself.

1 Q. So do you not know whether there was a minimum
2 requirement of the 16 monthly hours?

3 A. The I would have to refer to the -- the bylaws
4 themselves. I know the 16 hours that you get monthly encompass
5 the disciplines that you're certifying in. So those 16 hours a
6 month involve tracking, aggression, building search, obedience.

7 Q. How many hours of the 16 -- aside from whatever the
8 minimum requirement was for suspect apprehension, how many
9 hours of the 16 per month were devoted to suspect apprehension?
10 I'm talking about --

11 MR. EVASHAVIK: I'm going to object to the form.
12 Let me object to the form of the question. The witness didn't
13 answer affirmatively that there was a minimum number of hours
14 required of the 16 for apprehension. That's -- that was the
15 foundation of this question.

16 MR. GEARY: Right.

17 BY MR. GEARY:

18 Q. So my next question is: If you don't know what the
19 minimum number was, I understand that. In practice, how many
20 hours a month would you train with Aren in suspect
21 apprehension?

22 MR. EVASHAVIK: And, again, I'm going to object to
23 the form of the question. You're presuming that there is a
24 minimum number of hours that must be dedicated to apprehension.
25 So for that basis, I object to the form of your question.

1 BY MR. GEARY:

2 Q. Okay. You can answer.

3 A. So at times -- if you look at a month, our
4 training -- there's, you know, four Tuesdays. We would train
5 on Tuesdays. We generally try to split it eight and eight,
6 eight hours to scent detection work and eight hour to patrol
7 work. To say we did that all the time -- there would be times
8 where we spent 12 hours a month to patrol work and four to
9 detection work only because detection work is a little easier
10 to work one-on-one while you're working the shift. It's a
11 matter of just placing training aids out as opposed to the
12 patrol work where you require extra decoys to help you out.

13 Q. Thank you. So on the -- on the scent detention work
14 versus the patrol work -- the scent detention work -- sorry --
15 detection. Scent detection, did that not involve suspect
16 apprehension?

17 A. No.

18 Q. Did the patrol work involve scent detection?

19 A. No.

20 Q. Did the patrol work involve suspect apprehension?

21 A. It could.

22 Q. Okay. Did you ever -- now, not training but on a
23 shift -- deploy Lord to apprehend a suspect?

24 A. Yes.

25 Q. Okay. How many times?

1 A. Twice.

2 Q. Okay. What year was the first time?

3 A. I can't recall.

4 Q. Can you just give me an -- an approximate?

5 A. No, I really -- I really can't. I would have to go
6 back and look at my training records.

7 Q. Okay. So you were partners '03 to '010 roughly. Is
8 that right?

9 A. Yeah. Into that time frame, yes.

10 Q. Okay. Was this first deployment of Lord closer to
11 '010 or closer to '03?

12 A. It was probably right in the middle.

13 Q. Thank you. Please explain what -- what the scenario
14 was that developed and what happened and the deployment and was
15 it successful or not, so forth.

16 A. So it was a fleeing felon with a handgun, and that
17 involved the City of Pittsburgh. And he fled into the woods,
18 and Lord made an apprehension.

19 Q. Were there other K-9 teams on scene?

20 A. I don't recall.

21 Q. Okay. And what -- what was the name of the -- the
22 suspect?

23 A. I don't recall.

24 Q. Was it male or female?

25 A. Male.

1 Q. Okay. And was the male -- were they white? Black?
2 Hispanic? Asian?

3 A. It could have been an African American male.

4 Q. Okay. And describe for me, please, the actual
5 deployment. What was happening right before you decided to
6 deploy Lord?

7 A. The -- Lord was deployed in a section of woods that
8 were a heavy thicket. And it was an area search, which is an
9 off-lead search. Off lead, meaning off leash. And he fled
10 into the woods, which posed a threat to officers actually going
11 into the woods, so the K-9 was sent. And shortly after being
12 sent, located the suspect.

13 Q. Was the suspect armed?

14 A. Yes.

15 Q. With what?

16 A. A handgun.

17 Q. So when you deployed Lord, could you even see the
18 suspect?

19 A. No.

20 Q. And was Lord to find the suspect, in part, using the
21 scent of the suspect?

22 A. That would be part of it. Correct.

23 Q. And what other tools would Lord have used to locate
24 and apprehend that suspect?

25 A. Well, he could have used scent, and he could have

1 used hearing, sight. So, you know, probably those three.

2 Q. And did Lord bite that suspect?

3 A. Yes.

4 Q. Okay. And how -- how did you realize that Lord had
5 successfully located the suspect?

6 A. I believe I could hear a commotion in the woods.

7 Q. And so did you just follow whatever noises you
8 heard, and that led you to where the dog and the suspect were?

9 A. Yes.

10 Q. Okay. And in that instance, did you learn where on
11 the suspect's body that Lord had bit?

12 A. Yes.

13 Q. Where on the suspect's body?

14 A. He had -- there was two areas. I think -- again, I
15 would have to go back to my records. It was determined that he
16 was -- he was fighting Lord. Because when we came upon him, he
17 was kicking him in the face several times. So I believe it
18 might have been like the lower -- lower foot and arm, but I
19 would have to look at my records.

20 Q. The suspect was kicking Lord?

21 A. Yeah. He was fighting him.

22 Q. And then did you or other officers have to intervene
23 in that?

24 A. He was -- yes, he was handcuffed.

25 Q. And I think you said you deployed Lord for a suspect

1 apprehension one other time in your career. Is that right?

2 A. Correct.

3 Q. Please lay that out for me.

4 A. A robbery that occurred at the South Hills junction,
5 which is located in the Beltzhoover -- Beltzhoover area. It's
6 a terminus where the Port Authority transit buses are located.
7 And the suspects ran -- it was up into Beltzhoover. And I
8 sent -- I located them running and sent Lord on an
9 apprehension.

10 Q. Was the suspect armed?

11 A. No.

12 Q. And in that instance when you deployed Lord, could
13 you see the suspect?

14 A. Yes.

15 Q. Okay. And what was the distance from you and Lord
16 to that suspect, please?

17 A. 10 yards.

18 Q. What was that suspect's name?

19 A. I would have to look at my records. I don't know.
20 I don't recall.

21 Q. Male?

22 A. It was a male.

23 Q. Okay. Black? White? Other?

24 A. He was a black -- black male.

25 Q. And tell me what -- when you deployed Lord, what did

1 you see Lord do?

2 A. Lord ran downfield, which was -- downfield,
3 referring to towards the suspect.

4 Q. And then tell me what you watched Lord do.

5 A. I watched the suspect stop, raise his hands up in
6 the air, and say "I surrender." And then I recalled Lord back
7 to my side.

8 Q. And I'm sorry. You said the suspect was armed?

9 A. No, he was not.

10 Q. Oh, okay. I'm sorry.

11 So those were two deployments of Lord, is that
12 correct, in your career?

13 A. Yes.

14 Q. And were they both successful deployments?

15 A. Correct.

16 Q. Okay. Did you ever deploy Aren prior to January 31
17 of '016 with this Bruce Kelley, Jr., incident?

18 A. Are we -- when we use "deployment," are you
19 referring to apprehension? Correct?

20 Q. Yes, sir.

21 A. No.

22 Q. Okay. Had Aren undergone training on how to
23 apprehend a suspect?

24 A. Yes, sir.

25 Q. Okay. And would the training of Aren be the same or

1 equivalent of the training that Lord underwent?

2 A. No.

3 Q. Okay. And tell me how the trainings of the two dogs
4 were different, please.

5 A. If you remember me saying, the certification at some
6 point changed, and it involved gunfire in the actual
7 certification test. So he -- Aren may have got more extensive
8 certification training than what Lord got in his initial
9 training.

10 Q. Okay.

11 A. So that -- there was a changeover. So, actually, in
12 short, the test got harder.

13 Q. And separate from what you just explained, were
14 there any other differences in the training between Aren and
15 Lord?

16 A. No.

17 Q. Lord had some credentials or qualifications through
18 ATF. Did Aren have any certifications or qualifications
19 through any other entity separate from NAPWDA?

20 A. No.

21 Q. Using January 31st, '016, as a reference point, when
22 was the most recent time, the date on which Aren had undergone
23 suspect apprehension training?

24 A. Probably that month.

25 Q. Okay. And when you say "probably that month," when

1 you use the word "probably," does that -- does that mean maybe
2 in January of '016 Aren did not undergo any training regarding
3 suspect apprehension?

4 A. No, that's not what I mean. So he -- we do -- that
5 was the end of the month, the 31st. So during that month, we
6 did patrol training.

7 Q. Okay. And are there records that prove that Aren
8 actually underwent suspect apprehension training in that month
9 of January?

10 MR. EVASHAVIK: Object to the form.

11 THE WITNESS: Yes.

12 BY MR. GEARY:

13 Q. Okay. How many hours of suspect apprehension
14 training did Aren have in January of '016?

15 A. Well, he had gone through several certification --
16 NAPWDA certification, yearlies, so Aren had had hundreds of
17 hours.

18 Q. Well, I'm focusing on the month of January of '016.
19 This happened on January 31st. How many hours of suspect
20 apprehension training did Aren have that month, January of
21 '016?

22 A. I don't know.

23 Q. Okay. What about December of '15?

24 A. I would have to look at my records.

25 Q. Okay. What about November of '15?

1 A. Again, I would have to look at my records.

2 Q. Okay. Would that be the same for all the months in
3 '015? You would have to look at your records?

4 A. Correct.

5 Q. Okay. Do you have your records with you?

6 A. No.

7 Q. I'm looking at a -- at a document. I can scan this
8 in and e-mail it to you. I didn't intend to reference it, but
9 if you -- I can scan it over. It says -- it's 10/13/015 NAPWDA
10 K-9 Team Certification Test Sheet. Last name, O'Malley. K-9
11 name, Aren. James Moloney is the master trainer. He signed
12 it.

13 And then there's pass -- there's phases tested in,
14 and then there's pass and fail. So it has categories:
15 Obedience, pass. Area search, pass. Tracking, pass. Building
16 search, pass. Aggression control, pass. And then Moloney
17 signs those and dates them all the same date.

18 So, for instance, on October of '015 on this
19 training session, it says -- it's titled "Certification Test
20 Sheet." It says "Aggression Control, pass." Can we tell from
21 this piece of paper how many hours of aggression control
22 training Aren underwent in that training session?

23 MR. EVASHAVIK: Object to the form of the question.
24 We haven't seen the paper.

25 MR. GEARY: Okay. Give me -- yeah. If you just

1 give me, like, two minutes, please, I'll just go up, scan it
2 in, and e-mail it to you, Greg.

3 MR. EVASHAVIK: Well, why don't we -- it's been an
4 hour and a half. Let's take a restroom break.

5 MR. GEARY: No. That's fine.

6 MR. EVASHAVIK: All right. Off the record.

7 THE VIDEOGRAPHER: We're going off the record at
8 11:28 a.m.

9 (Whereupon, a brief recess was taken.)

10 THE VIDEOGRAPHER: Back on the record at 11:40 a.m.

11 BY MR. GEARY:

12 Q. Okay. Lieutenant, are you ready?

13 A. Yes, sir.

14 MR. EVASHAVIK: Let me just say, Noah, for the
15 record, whatever you sent me wasn't attached. But we found it
16 anyway in -- I think what you're referring to, we found in the
17 documents that he produced to you. This document.

18 MR. GEARY: Oh, I'm sorry. Can you just, like, give
19 me ten seconds? I just want to look to my computer, because it
20 went through on my end that it was attached. I apologize.

21 MR. EVASHAVIK: I think I have the same thing, so it
22 won't matter. No, it wasn't attached on my end. But let's --
23 can you identify it? We might have it anyway, so you don't
24 have to check.

25 MR. GEARY: Sure. No. So this would be Exhibit 29.